

## CHAPTER 121

## FLORIDA RETIREMENT SYSTEM

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**121.011 Florida Retirement System.—**

(1) SHORT TITLE.—This chapter shall be known and cited as the "Florida Retirement System Act."

**(2) CONSOLIDATION OF EXISTING SYSTEMS AND LAWS.—**

(a) Any officer or employee who is elected, appointed, or employed by the state or any subdivision thereof on or after December 1, 1970, shall not be eligible for membership, rights, or any privileges under chapters 122 (State and County Officers and

Employees' Retirement System) and 238 (retirement system for school teachers) and those sections of chapter 321 pertaining to highway patrol pensions and pension trust fund.

(b) The chapters or retirement system laws named in paragraph (a) are hereby consolidated as separate instruments appended to the "Florida Retirement System Act" established by this chapter, and the administration of said chapters or retirement systems shall be consolidated with the administration of the Florida Retirement System established by this chapter, and the Florida Retirement System shall assume all liabilities related to the payment of benefits to members and their beneficiaries under the respective retirement systems of the members and their beneficiaries.

(3) PRESERVATION OF RIGHTS.—

(a) The rights of members of the retirement systems established by chapters 122, 238, and 321 shall not be impaired, nor shall their benefits be reduced by virtue of any part of this chapter, except that if an eligible member of a retirement system established by chapter 122, chapter 238, or chapter 321, elects between April 15, 1971, and June 1, 1971, inclusive, to transfer to the Florida Retirement System, he or she shall be transferred to the Florida Retirement System on June 1, 1971, and shall be subject to the provisions of the Florida Retirement System established by this chapter and at retirement have his or her benefits calculated in accordance with the provisions of s. 121.091.

(b) The rights of members of any retirement system established by local or special act or municipal ordinance shall not be impaired, nor shall their benefits be reduced by virtue of any part of this chapter.

1. If an eligible member of any such retirement system elects to transfer to the Florida Retirement System in a referendum held in accordance with this chapter by the governing body administering such local retirement system, he or she shall be transferred to the Florida Retirement System on the date that his or her unit is accepted for membership therein and shall be subject to the provisions of the Florida Retirement System established by this chapter and at retirement have his or her benefits calculated in accordance with the provisions of s. 121.091. However, the governing body shall preserve the rights of employees of any existing local retirement system not electing to transfer to the Florida Retirement System.

2. Whenever any employee of a governmental entity which has a local retirement system becomes eligible to participate in the Florida Retirement System by virtue of the consolidation or merger of governments or the transfer of functions between units of government, such employee shall elect either to continue to participate in the local retirement system or to become a member of the Florida Retirement System. For any such employee who elects to continue to be a member of the local retirement system, the Florida Retirement System employer is authorized to make the required employer contributions to the local retirement system and may make appropriate deductions from the employee's salary as required by the local plan to preserve his or her retirement benefits.

(c) Any member of the Supreme Court Justices, District Courts of Appeal Judges, and Circuit Judges' Retirement System, former chapter 123, who terminates his or her service as a justice or judge and accepts employment covered under this chapter and elects to transfer to the Florida Retirement System rather than retain his or her vested rights under former chapter 123 may transfer to the Florida Retirement System. All contributions of such member, including matching contributions, shall be transferred from the judicial retirement trust fund to the system trust fund, and his or her normal retirement benefit shall conform with s. 121.091 from November 30, 1970, or from date of transfer thereafter. Any justice or judge electing to transfer to the Florida Retirement System pursuant to the provisions of this paragraph may, at any time prior to retirement, pay for and receive credit for any service performed in any position covered by the existing systems as defined in this chapter for which he or she has not already received credit. The amount of such payments and the credit received for such service shall be the same as required for a member to obtain credit for prior service pursuant to s. 8(2), chapter 70-112, Laws of Florida, appearing as s. 121.081(2). Any justice or judge who elects to transfer to the Florida Retirement System as provided herein and who retires under the provisions of this chapter shall be eligible for judicial service pursuant to the applicable provisions of law if he or she has had no less than 5 years of judicial service at the time of retirement.

(d) The rights of members of the retirement system established by this chapter shall not be impaired by virtue of the conversion of the Florida Retirement System to an employee noncontributory system. As of July 1, 1974, the rights of members of the retirement system established by this chapter are declared to be of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way.

(e) Any member of the Florida Retirement System or any member of an existing system under this chapter on July 1, 1975, who is not retired and who is, has been, or shall be, suspended and reinstated without compensation shall receive retirement service credit for the period of time from the date of suspension to the date of reinstatement, provided:

1. The creditable service claimed for the period of suspension does not exceed 24 months;

2. The member returns to active employment and remains on the employer's payroll for at least 1 calendar month; and

3. The member pays into the Retirement System Trust Fund the total required employer contributions plus the total employee contributions, if applicable, based on the member's monthly compensation in effect for the pay period immediately preceding the period of suspension, prorated for the said period of suspension, plus interest thereon at a rate of 4 percent per annum compounded annually until July 1, 1975, and 6.5 percent interest thereafter until paid. If permitted by federal law, the member may pay to the Internal Revenue Service the total cost, if any, of providing

social security coverage for the period of suspension if any social security payments have been made by the employer for the benefit of the member during such period. Should there be any conflict as to payment for social security coverage, the payment for retirement service credit shall be made and retirement service credit granted regardless of such conflict.

(f) The rights under an existing system of any former member of such system who has become a member of the Florida Retirement System, either by affirmative choice made during the initial transfer period of October 15, 1970, through November 30, 1970, or at any time on or after December 1, 1970, or by operation of the compulsory participation provisions of s. 121.051(1), are limited to those rights that existed and were exercised in such system at the time participation in the system ceased. The rights of such member after transfer shall be subject to the provisions of the Florida Retirement System established by this chapter, and at retirement the member shall have his or her benefit calculated in accordance with s. 121.091. The provisions of this paragraph are declaratory of the legislative intent upon the original enactment of this chapter and are hereby deemed to have been in effect from such date.

(g) Any member of the Florida Retirement System or any member of an existing system under this chapter who is not retired and who is, has been, or shall be dismissed from employment shall be considered terminated from active membership in such system.

1. If such dismissal is rescinded by proper authority or through legal proceedings, the member is eligible to receive retirement service credit for such period of dismissal if:

a. The dismissal action taken against the member is determined to be incorrect and is negated, the employee is made whole for the period of the dismissal or any portion thereof, and employment is reinstated; and

b. The employer pays into the Retirement System Trust Fund the total required employer contributions for the period for which the employee is made whole, plus interest at 6.5 percent compounded annually until full payment is made. The employee shall pay the total employee contributions, if applicable. The employer shall pay the interest on employee contributions, if applicable.

2. If the dismissal action is subsequently changed to a suspension by proper authority or through legal proceedings, the member is eligible to receive retirement service credit, provided the member's employment is reinstated, restoring the employee-employer relationship, and the employee pays the total required employer and employee contributions and complies with all requirements in paragraph (e).

(h) Effective July 1, 2011, the retirement system shall require employer and employee contributions as provided in s. 121.071 and part III of this chapter.

**History.**—s. 1, ch. 70-112; s. 1, ch. 71-82; s. 1, ch. 71-353; s. 1, ch. 74-302; s. 1, ch. 75-160; s. 1, ch. 77-174; s. 25, ch. 79-164; s. 4, ch. 79-377; s. 1, ch. 83-76; s. 1, ch. 92-122; s. 768, ch. 95-147; s. 1, ch. 97-180; s. 2, ch. 98-413; s. 50, ch. 99-2; s. 3, ch. 99-392; s. 9, ch. 2004-234; s. 5, ch. 2011-68.

**121.012 Inclusive provisions.**—The provisions of part I of this chapter shall be applicable to parts II and III to the extent such provisions are not inconsistent with, or duplicative of, the provisions of parts II and III.

**History.**—s. 1, ch. 2012-222.

**121.021 Definitions.**—The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(1) Gender-specific language whenever used in this chapter includes the other gender.

(2) “Existing systems” means the State and County Officers and Employees’ Retirement System, the retirement system for school teachers, and the highway patrol pensions and pension trust fund, which are consolidated in s. 121.011(2). On and after July 1, 1972, the term “existing systems” shall also include the retirement system for justices and judges established by former chapter 123 and as consolidated with the Florida Retirement System in s. 121.046.

(3) “Florida Retirement System” or “system” means the general retirement system established by this chapter, including, but not limited to, the defined benefit program administered under this part, referred to as the “Florida Retirement System Pension Plan” or “pension plan,” and the defined contribution program administered under part II of this chapter, referred to as the “Florida Retirement System Investment Plan” or “investment plan.”

(4) “Department” means the Department of Management Services.

(5) “Administrator” means the secretary of the Department of Management Services.

(6) “Actuary” or “state retirement actuary” means a fellow of the Society of Actuaries or a member of the American Academy of Actuaries or an organization of which one or more members is a fellow of the Society of Actuaries or a member of the American Academy of Actuaries or both.

(7) “Division” means the Division of Retirement in the department.

(8) “Unit” means any department, division, or subdivision of a city or any classification of city employees approved for social security coverage, as such, by the United States Department of Health and Human Services, not based on age, sex, or other classification resulting in higher than average costs for retirement benefits.

(9) “Special district” means an independent special district as defined in s. 189.012.

(10) “Employer” means any agency, branch, department, institution, university, institution of higher education, or board of the state, or any county agency, branch, department, board, district school board, municipality, metropolitan planning organization, or special district of the state which participates in the system for the benefit of certain of its employees, or a charter school or charter technical career center that participates as provided in s. 121.051(2)(d). Employers are not agents of the department, the state board, or the Division of Retirement, and the department, the state board, and the

division are not responsible for erroneous information provided by representatives of employers.

(11) "Officer or employee" means any person receiving salary payments for work performed in a regularly established position and, if employed by a municipality, a metropolitan planning organization, or a special district, employed in a covered group. The term does not apply to state employees covered by a leasing agreement under s. 110.191, other public employees covered by a leasing agreement, or a coemployer relationship.

(12) "Member" means any officer or employee who is covered or who becomes covered under this system in accordance with this chapter. On and after December 1, 1970, all new members and those members transferring from existing systems shall be divided into the following classes: "Special Risk Class," as provided in s. 121.0515; "Special Risk Administrative Support Class," as provided in s. 121.0515(8); "Elected Officers' Class," as provided in s. 121.052; "Senior Management Service Class," as provided in s. 121.055; and "Regular Class," which consists of all members who are not in the Special Risk Class, Special Risk Administrative Support Class, Elected Officers' Class, or Senior Management Service Class.

(13) "Disability in line of duty" means an injury or illness arising out of and in the actual performance of duty required by a member's employment during his or her regularly scheduled working hours or irregular working hours as required by the employer. Disability resulting from drug or alcohol abuse shall not be considered in the line of duty, except when the member is expected to use alcohol in the course of his or her official work in undercover law enforcement, and such use clearly results in the member's disability. The administrator may require such proof as he or she deems necessary as to the time, date, and cause of any such injury or illness, including evidence from any available witnesses. Workers' compensation records under the provisions of chapter 440 may also be used.

(14) "Death in line of duty" means death arising out of and in the actual performance of duty required by a member's employment during his or her regularly scheduled working hours or irregular working hours as required by the employer. The administrator may require such proof as he or she deems necessary as to the time, date, and cause of death, including evidence from any available witnesses. Workers' compensation records under the provisions of chapter 440 may also be used.

(15) "Special risk member" or "Special Risk Class member" means a member of the Florida Retirement System who meets the eligibility and criteria required under s. 121.0515 for participation in the Special Risk Class.

(16) "Date of participation" means the date on which the officer or employee becomes a member.

(17)(a) "Creditable service" of any member means the sum of his or her past service, prior service, military service, out-of-state or non-FRS in-state service, workers' compensation credit, leave-of-absence credit and future service allowed within the provisions of this chapter if all required contributions have been paid

and all other requirements of this chapter have been met. However, in no case shall a member receive credit for more than a year's service during any 12-month period. Service by a teacher, a nonacademic employee of a school board, or an employee of a participating employer other than a school board whose total employment is to provide services to a school board for the school year only shall be based on contract years of employment or school term years of employment, as provided in chapters 122 and 238, rather than 12-month periods of employment.

(b) For purposes of the definition of "creditible service," monthly service credit under the Florida Retirement System and existing state systems shall be awarded as follows:

1. One month of service credit shall be awarded for each month of service performed prior to July 1, 1974.

2. One month of service credit shall be awarded for each month of service performed on and after July 1, 1974, in which the member was paid a salary of \$100 or more. If the member was paid less than \$100 during a month of employment, the service credit for that month shall be a fraction of one month of credit, such fraction to be determined by dividing the actual salary by \$100.

3. One month of service credit shall be awarded for each month of service performed on and after July 1, 1979, for which the member was paid a salary of \$250 or more, including any amount which was set aside for participation in a deferred compensation plan. If the member was paid less than \$250 during a month of employment, the service credit for that month shall be a fraction of one month of credit, such fraction to be determined by dividing the actual salary payment by \$250.

4. On and after July 1, 1985, one month of service credit shall be awarded for each month salary is paid for service performed.

(18) "Past service" of any member, as provided in s. 121.081(1), means the number of years and complete months and any fractional part of a month, recognized and credited by an employer and approved by the administrator, during which the member was in the active employ of a governmental employer and for which the employee is not entitled to a benefit before his or her date of participation.

(19) "Prior service" under part I of this chapter means:

(a) Service for which the member had credit under one of the existing systems and received a refund of his or her contributions upon termination of employment. Prior service also includes service for which the member had credit under the Florida Retirement System and received a refund of his or her contributions upon termination of employment.

(b) Service prior to an employee's membership in the Florida Retirement System with an employer, either before or during the employer's participation in an existing system. The word "service" as used in this paragraph and paragraph (c) means employment service prior to December 1, 1970, which, at the time it is claimed as prior service, satisfies the requirements for a regularly established position, as defined by rules of the Florida Retirement System.

(c) Service as described in paragraph (b) for which no contributions were made due to the fact that the employee made a written rejection of an existing system. If such person withdraws the rejection, the person may purchase retirement credit for all his or her service during the period of rejection. Any governmental entity may contribute up to 50 percent of the amount required to purchase any prior service under paragraph (b) and this paragraph.

(d) Service which was performed in a Florida Highway Patrol recruit training school or the Florida Highway Patrol Training Academy, prior to taking the constitutional oath of office, by any Florida highway patrol officer who was hired on or after November 1, 1939, and before July 1, 1968, and for which no retirement contributions were paid.

(20) "Military service" of any member means:

(a) Service in the Armed Forces of the United States under the conditions set forth in s. 121.111(1); or

(b) Actual "wartime service" in the Armed Forces of the United States, as defined by s. 1.01(14), or "wartime service" in the Allied Forces, not to exceed 4 years, if credit for such service has not been granted under any other federal or state system, and provided such service is not used in any other retirement system; however, this paragraph does not prohibit the use of such service as creditable service if granted and used in a pension system under chapter 67 of Title 10 of the United States Code.

(21) "Future service" of any member means service subsequent to date of the member's participation and may include authorized leaves of absence as provided in s. 121.121.

(22) "Compensation" means the monthly salary paid a member by his or her employer for work performed arising from that employment.

(a) Compensation shall include:

1. Overtime payments paid from a salary fund.
2. Accumulated annual leave payments.
3. Payments in addition to the employee's base rate of pay if all the following apply:

- a. The payments are paid according to a formal written policy that applies to all eligible employees equally;

- b. The policy provides that payments shall commence no later than the 11th year of employment;

- c. The payments are paid for as long as the employee continues his or her employment; and

- d. The payments are paid at least annually.
4. Amounts withheld for tax sheltered annuities or deferred compensation programs, or any other type of salary reduction plan authorized under the Internal Revenue Code.

5. Payments made in lieu of a permanent increase in the base rate of pay, whether made annually or in 12 or 26 equal payments within a 12-month period, when the member's base pay is at the maximum of his or her pay range. When a portion of a member's annual increase raises his or her pay range and the excess is paid as a lump sum payment, such lump sum payment shall be compensation for retirement purposes.

(b) Compensation for a member participating in the pension plan or the investment plan of the Florida Retirement System may not include:

1. Fees paid professional persons for special or particular services or salary payments made from a faculty practice plan authorized by the Board of Governors of the State University System for eligible clinical faculty at a college in a state university that has a faculty practice plan; or

2. Any bonuses or other payments prohibited from inclusion in the member's average final compensation.

(c) For all purposes under this chapter, the member's compensation or gross compensation contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code shall be deemed to be the compensation or gross compensation which the member would receive if he or she were not participating in such program and shall be treated as compensation for retirement purposes under this chapter. Any public funds otherwise paid by an employer into an employee's salary reduction, deferred compensation, or tax-sheltered annuity program on or after July 1, 1990 (the date as of which all employers were notified in writing by the division to cease making contributions to the System Trust Fund based on such amounts), shall be considered a fringe benefit and shall not be treated as compensation for retirement purposes under this chapter. However, if an employer was notified in writing by the division to cease making such contributions as of a different date, that employer shall be subject to the requirements of said written notice.

(d) For any person who first becomes a member on or after July 1, 1996, compensation for any plan year shall not include any amounts in excess of the s. 401(a)(17), Internal Revenue Code limitation (as amended by the Omnibus Budget Reconciliation Act of 1993), which limitation of \$150,000 effective July 1, 1996, shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by s. 401(a)(17)(B), Internal Revenue Code. For any person who first became a member prior to July 1, 1996, compensation for all plan years beginning on or after July 1, 1990, shall not include any amounts in excess of the compensation limitation (originally \$200,000) established by s. 401(a)(17), Internal Revenue Code prior to the Omnibus Budget Reconciliation Act of 1993, which limitation shall be adjusted for changes in the cost of living since 1989, in the manner provided by s. 401(a)(17) of the Internal Revenue Code of 1991. This limitation, which has been part of the Florida Retirement System since plan years beginning on or after July 1, 1990, shall be adjusted as required by federal law for qualified government plans.

(23) "Annual compensation" means the total compensation paid a member during a year. A "year" is 12 continuous months.

(24)(a) "Average final compensation" means:

1. For members initially enrolled before July 1, 2011, the average of the 5 highest fiscal years of compensation for creditable service before retirement,

termination, or death. For in-line-of-duty disability benefits, if less than 5 years of creditable service have been completed, the term means the average annual compensation of the total number of years of creditable service. Each year used to calculate the average final compensation commences on July 1.

2. For members initially enrolled on or after July 1, 2011, the average of the 8 highest fiscal years of compensation for creditable service before retirement, termination, or death. For in-line-of-duty disability benefits, if less than 8 years of creditable service have been completed, the term means the average annual compensation of the total number of years of creditable service. Each year used to calculate average final compensation commences on July 1.

(b) The average final compensation includes:

1. Accumulated annual leave payments, not to exceed 500 hours; and

2. All payments defined as compensation in subsection (22).

(c) The average final compensation does not include:

1. Compensation paid to professional persons for special or particular services;

2. Payments for accumulated sick leave made due to retirement or termination;

3. Payments for accumulated annual leave in excess of 500 hours;

4. Bonuses as defined in subsection (47);

5. Third party payments made on and after July 1, 1990; or

6. Fringe benefits (for example, automobile allowances or housing allowances).

(25) "Average monthly compensation" means one-twelfth of average final compensation.

(26) "Accumulated contributions" means the sum of:

(a) A member's contributions, without interest, subsequent to December 1, 1970; and

(b) The single-sum amount the member would have received if he or she was covered by an existing system prior to December 1, 1970, and had terminated membership in such system on November 30, 1970, subject to reduction on account of benefit payments as provided under certain options.

(27) "Pension" means monthly payments to a retiree derived as provided in this chapter.

(28) "Joint annuitant" means any person designated by the member to receive a retirement benefit upon the member's death who is:

(a) The spouse of the member;

(b) The member's natural or adopted child who is under age 25, or is physically or mentally disabled and incapable of self-support, regardless of age; or any person other than the spouse for whom the member is the legal guardian, provided that such person is under age 25 and is financially dependent for no less than one-half of his or her support from the member at retirement or at the time of death of such member, whichever occurs first; or

(c) A parent or grandparent, or a person age 25 or older for whom the member is the legal guardian, provided that such parent, grandparent, or other person is financially dependent for no less than one-half of his

or her support from the member at retirement or at time of the death of such member, whichever occurs first.

(29) "Normal retirement date" means the date a member attains normal retirement age and is vested, which is determined as follows:

(a) If a Regular Class member, a Senior Management Service Class member, or an Elected Officers' Class member initially enrolled:

1. Before July 1, 2011:

a. The first day of the month the member attains age 62; or

b. The first day of the month following the date the member completes 30 years of creditable service, regardless of age.

2. On or after July 1, 2011:

a. The first day of the month the member attains age 65; or

b. The first day of the month following the date the member completes 33 years of creditable service, regardless of age.

(b) If a Special Risk Class member initially enrolled:

1. Before July 1, 2011:

a. The first day of the month the member attains age 55 and completes the years of creditable service in the Special Risk Class equal to or greater than the years of service required for vesting;

b. The first day of the month following the date the member completes 25 years of creditable service in the Special Risk Class, regardless of age; or

c. The first day of the month following the date the member completes 25 years of creditable service and attains age 52, which service may include a maximum of 4 years of military service credit if such credit is not claimed under any other system and the remaining years are in the Special Risk Class.

2. On or after July 1, 2011:

a. The first day of the month the member attains age 60 and completes the years of creditable service in the Special Risk Class equal to or greater than the years of service required for vesting;

b. The first day of the month following the date the member completes 30 years of creditable service in the Special Risk Class, regardless of age; or

c. The first day of the month following the date the member completes 30 years of creditable service and attains age 57, which service may include a maximum of 4 years of military service credit if such credit is not claimed under any other system and the remaining years are in the Special Risk Class.

For pension plan members, normal retirement age is attained on the normal retirement date. For investment plan members, normal retirement age is the date a member attains his or her normal retirement date as provided in this section, or the date a member is vested under the investment plan as provided in s. 121.4501(6), whichever is later.

(30) "Early retirement date" means the first day of the month following the date a member becomes vested and elects to receive retirement benefits in accordance with this chapter. Such benefits shall be based on average monthly compensation and creditable service as of the member's early retirement date, and the

benefit so computed shall be reduced by five-twelfths of 1 percent for each complete month by which the early retirement date precedes his or her normal retirement date as provided in s. 121.091(3).

(31) "Actuarial equivalent" means a benefit of equal value when computed at regular interest upon the basis of the mortality tables adopted by the administrator.

(32) "State agency" means the Department of Management Services within the provisions and contemplation of chapter 650.

(33) "Agreement" means that certain agreement entered into October 23, 1951, between the State of Florida and the Federal Security Administrator. (Chapter 650 implements the procedure to provide for social security coverage.)

(34) "Covered group" means the officers and employees of an employer who become members under this chapter. "Covered group" applies also when the employer is a charter technical career center, charter school, special district, or city for which coverage under this chapter is applied for by the employer and approved for social security coverage by the United States Secretary of Health and Human Services and approved by the administrator for membership under this chapter. Members of a firefighters' pension trust fund or a municipal police officers' retirement trust fund, established in accordance with chapter 175 or chapter 185, respectively, shall be considered eligible for membership under this chapter only after holding a referendum and by affirmative majority vote electing coverage under this chapter.

(35) "Social security coverage" means old-age, survivors, disability, and health insurance, as provided by the federal Social Security Act.

(36) "System Trust Fund" means the trust fund established in the State Treasury by this chapter for the purpose of holding and investing the contributions paid by members and employers and paying the benefits to which members or their beneficiaries may become entitled. Other trust funds may be established in the State Treasury to administer the "System Trust Fund."

(37) "Social Security Trust Fund" means the trust fund established in the State Treasury by this chapter for the purpose of receiving the contributions paid by members and employers for payment to the Secretary of the Treasury. Other trust funds may be established to administer the "Social Security Trust Fund."

(38) "Continuous service" means creditable service as a member, beginning with the first day of employment with an employer covered under a state-administered retirement system consolidated herein and continuing for as long as the member remains in an employer-employee relationship with an employer covered under this chapter. An absence of 1 calendar month or more from an employer's payroll shall be considered a break in continuous service, except for periods of absence during which an employer-employee relationship continues to exist and such period of absence is creditable under this chapter or under one of the existing systems consolidated herein. However, a law enforcement officer as defined in s. 121.0515(3)(a) who was a member of a state-administered retirement

system under chapter 122 or chapter 321 and who resigned and was subsequently reemployed in a law enforcement position within 12 calendar months of such resignation by an employer under such state-administered retirement system shall be deemed to have not experienced a break in service. Further, with respect to a state-employed law enforcement officer who meets the criteria specified in s. 121.0515(3)(a), if the absence from the employer's payroll is the result of a "layoff" as defined in s. 110.107 or a resignation to run for an elected office that meets the criteria specified in s. 121.0515(3)(a), no break in continuous service shall be deemed to have occurred if the member is reemployed as a state law enforcement officer or is elected to an office which meets the criteria specified in s. 121.0515(3)(a) within 12 calendar months after the date of the layoff or resignation, notwithstanding the fact that such period of layoff or resignation is not creditable service under this chapter. A withdrawal of contributions will constitute a break in service. Continuous service also includes past service purchased under this chapter, provided such service is continuous within this definition and the rules established by the administrator. The administrator may establish administrative rules and procedures for applying this definition to creditable service authorized under this chapter. Any correctional officer, as defined in s. 943.10, whose participation in the state-administered retirement system is terminated due to the transfer of a county detention facility through a contractual agreement with a private entity pursuant to s. 951.062, shall be deemed an employee with continuous service in the Special Risk Class, provided return to employment with the former employer takes place within 3 years due to contract termination or the officer is employed by a covered employer in a special risk position within 1 year after his or her initial termination of employment by such transfer of its detention facilities to the private entity.

(39)(a) "Termination" occurs, except as provided in paragraph (b), when a member ceases all employment relationships with participating employers, however:

1. For retirements effective before July 1, 2010, if a member is employed by any such employer within the next calendar month, termination shall be deemed not to have occurred. A leave of absence constitutes a continuation of the employment relationship, except that a leave of absence without pay due to disability may constitute termination if such member makes application for and is approved for disability retirement in accordance with s. 121.091(4). The department or state board may require other evidence of termination as it deems necessary.

2. For retirements effective on or after July 1, 2010, if a member is employed by any such employer within the next 6 calendar months, termination shall be deemed not to have occurred. A leave of absence constitutes a continuation of the employment relationship, except that a leave of absence without pay due to disability may constitute termination if such member makes application for and is approved for disability retirement in accordance with s. 121.091(4). The department or state board may require other evidence of termination as it deems necessary.

(b) "Termination" for a member electing to participate in the Deferred Retirement Option Program occurs when the program participant ceases all employment relationships with participating employers in accordance with s. 121.091(13), however:

1. For termination dates occurring before July 1, 2010, if the member is employed by any such employer within the next calendar month, termination will be deemed not to have occurred, except as provided in s. 121.091(13)(b)4.c. A leave of absence shall constitute a continuation of the employment relationship.

2. For termination dates occurring on or after July 1, 2010, if the member becomes employed by any such employer within the next 6 calendar months, termination will be deemed not to have occurred, except as provided in s. 121.091(13)(b)4.c. A leave of absence constitutes a continuation of the employment relationship.

(c) Effective July 1, 2011, "termination" for a member receiving a refund of employee contributions occurs when a member ceases all employment relationships with participating employers for 3 calendar months. A leave of absence constitutes a continuation of the employment relationship.

(40) "Plan year" means the period of time beginning July 1 and ending on the following June 30, both dates inclusive, for all state-administered retirement systems.

(41) "Effective date of retirement" means the first day of the month in which benefit payments begin to accrue pursuant to s. 121.091.

(42)(a) "Local agency employer" means the board of county commissioners or other legislative governing body of a county, however styled, including that of a consolidated or metropolitan government; a clerk of the circuit court, sheriff, property appraiser, tax collector, or supervisor of elections, provided such officer is elected or has been appointed to fill a vacancy in an elective office; a community college board of trustees or district school board; or the governing body of any city, metropolitan planning organization created pursuant to s. 339.175 or any other separate legal or administrative entity created pursuant to s. 339.175, or special district of the state which participates in the system for the benefit of certain of its employees.

(b) The term "local agency employer" also includes the governing body of any council, commission, authority, or other governmental entity created or authorized by general or special law, which participates in the Florida Retirement System for the benefit of its employees, and which is independent of any local agency employer as defined under paragraph (a).

(43) "Phased retirement program" means a program contracted by the governing board of a university or community college participating under this chapter in which a retiree may be reemployed in a faculty position provided:

(a) The member retired and met the definition of termination under this section;

(b) The retired member is reemployed for not more than 780 hours during the first 12 months of his or her retirement; and

(c) The retired member is reemployed with the university or community college from which he or she retired.

Renewed membership for a retiree participating in a phased retirement program shall be determined in accordance with s. 121.053 or s. 121.122.

(44) "DROP participant" means any member who elects to retire and participate in the Deferred Retirement Option Program as provided in s. 121.091(13).

(45) "Vested" or "vesting" means the guarantee that a member is eligible to receive a future retirement benefit upon completion of the required years of creditable service for the employee's class of membership, even though the member may have terminated covered employment before reaching normal or early retirement date. Being vested does not entitle a member to a disability benefit. Provisions governing entitlement to disability benefits are set forth under s. 121.091(4).

(a) Effective July 1, 2001, through June 30, 2011, a 6-year vesting requirement shall be implemented for the Florida Retirement System Pension Plan:

1. Any member employed in a regularly established position on July 1, 2001, who completes or has completed a total of 6 years of creditable service is considered vested.

2. Any member not employed in a regularly established position on July 1, 2001, shall be deemed vested upon completion of 6 years of creditable service if such member is employed in a covered position for at least 1 work year after July 1, 2001. However, a member is not required to complete more years of creditable service than would have been required for that member to vest under retirement laws in effect before July 1, 2001.

3. Any member initially enrolled in the Florida Retirement System on July 1, 2001, through June 30, 2011, shall be deemed vested upon completion of 6 years of creditable service.

(b) Any member initially enrolled in the Florida Retirement System on or after July 1, 2011, shall be vested in the pension plan upon completion of 8 years of creditable service.

(46) "Beneficiary" means the joint annuitant or any other person, organization, estate, or trust fund designated by the member to receive a retirement benefit, if any, which may be payable upon the member's death.

(47) "Bonus" means a payment made in addition to an employee's regular or overtime salary. A bonus is usually nonrecurring, does not increase the employee's base rate of pay, and includes no commitment for payment in a subsequent year. Such payments are not considered compensation. Effective July 1, 1989, employers may not report such payments to the division as salary, and may not make retirement contributions on such payments.

(a) A payment is a bonus if any of the following circumstances apply:

1. The payment is not made according to a formal written policy that applies to all eligible employees equally.

2. The payment commences later than the 11th year of employment.

3. The payment is not based on permanent eligibility.

4. The payment is made less frequently than annually.



(b) Bonuses shall include, but not be limited to, the following:

1. Exit bonus or severance pay.
2. Longevity payments in conformance with the provisions of paragraph (a).
3. Salary increases granted pursuant to an employee's agreement to retire, including increases paid over several months or years prior to retirement.
4. Payments for accumulated overtime or compensatory time, reserve time, or holiday time worked, if not made within 11 months of the month in which the work was performed.
5. Lump sum payments in recognition of employees' accomplishments.

(48) "Accumulated annual leave payment" means any payment, made either during an employee's employment or at termination or retirement, for leave accrued during such employee's career, which leave was intended for, but never utilized by the employee for, his or her personal use. General leave, which may be used for both sickness and vacation, is considered accumulated annual leave. When leave is initially accrued separately as annual leave or sick leave and is later combined into a consolidated leave account, only the payment for that portion of the account which represents annual leave shall be considered as compensation. If any single lump-sum annual leave payment, made at anytime during a member's employment, exceeds 500 hours, only a maximum of 500 hours of such annual leave payment shall be considered as compensation.

(49) "Accumulated sick leave payment" means leave accrued during an employee's career which was intended for use in the event of sickness, injury, or other health problems of a member or his or her family. General leave which may be used for both sickness and vacation is not considered sick leave. When leave is initially accrued separately as annual leave or sick leave and is later combined into a consolidated leave account, the payment for that portion of the account which represents sick leave shall not be considered compensation.

(50) "Independent contractor" means an individual who is not subject to the control and direction of the employer for whom work is being performed, with respect not only to what shall be done but to how it shall be done. If the employer has the right to exert such control, an employee-employer relationship exists, and, for purposes of this chapter, the person is an employee and not an independent contractor. The division shall adopt rules providing criteria for determining whether an individual is an employee or an independent contractor.

(51) "Previous service" means the number of years, complete months, and any fractional part of a month, as recognized and credited by an employer and approved by the administrator, of service under one of the retirement systems established by this chapter, chapter 122, former chapter 123, chapter 238, or chapter 321, on which the required contributions were paid at the member's termination of employment, and for which the member has received no refund of contributions.

(52) "Regularly established position" means:

(a) With respect to a state employer, a position that is authorized and established pursuant to law and is compensated from a salaries and benefits appropriation pursuant to s. 216.011(1)(mm), or an established position that is authorized pursuant to s. 216.262(1)(a) and (b) and is compensated from a salaries account as provided in s. 216.011(1)(nn).

(b) With respect to a local agency employer (district school board, county agency, Florida College System institution, municipality, metropolitan planning organization, charter school, charter technical career center, or special district), other than a water management district operating pursuant to chapter 373, a regularly established position that will be in existence for a period beyond 6 consecutive months, except as provided by rule.

(c) With respect only to a water management district operating pursuant to chapter 373, a position authorized in the district's final adopted budget and compensated from a salaries and benefits appropriation or account.

(53) "Temporary position" means:

(a) With respect to a state employer, a position that is compensated from an other personal services (OPS) account as provided in s. 216.011(1)(dd).

(b) With respect to a local agency employer, other than a water management district operating pursuant to chapter 373, a position that will exist for less than 6 consecutive months, or other position as determined by rule of the division, regardless of whether it will exist for 6 consecutive months or longer.

(c) With respect only to a water management district operating pursuant to chapter 373, a position not authorized in the district's final adopted budget, and designated as a temporary position by the district.

(54) "Work year" means the period of time an employee is required to work during the plan year to receive a full year of retirement credit, as provided by rule.

(55) "Benefit" means any pension payment, lump-sum or periodic, to a member, retiree, or beneficiary, based partially or entirely on employer contributions or employee contributions, if applicable.

(56) "Calendar month" means one of the 12 divisions of a year as determined by the Gregorian calendar (e.g., January, April, etc.).

(57) "Calendar year" means a period of time beginning January 1 and ending on the following December 31.

(58) "Leave of absence" means a leave of absence from employment under the Florida Retirement System, subsequent to November 30, 1970, for which retirement credit may be received in accordance with s. 121.121.

(59) "Payee" means a retiree or beneficiary of a retiree who has received or is receiving a retirement benefit payment.

(60) "Retiree" means a former member of the Florida Retirement System or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member. This term also includes a person who retired and is receiving benefits under s. 112.05.

(61) "Signature" means the name or mark of a person as written by that person. When an "X" is used as a

signature on a document, the document must include the printed names, signatures, and addresses of two persons who witnessed the signing, or the document must be notarized.

(62) "Metropolitan planning organization" means an entity created by an interlocal agreement pursuant to s. 339.175 or any other entity created pursuant to s. 339.175.

(63) "State board" means the State Board of Administration.

(64) "Trustees" means the Board of Trustees of the State Board of Administration.

**History.**—s. 2, ch. 70-112; s. 1, ch. 72-122; s. 1, ch. 72-347; s. 2, ch. 72-388; s. 2, ch. 73-312; s. 1, ch. 73-326; s. 42, ch. 73-333; s. 2, ch. 74-302; s. 1, ch. 74-328; s. 3, ch. 75-248; s. 1, ch. 76-226; s. 1, ch. 77-174; ss. 1, 4, ch. 77-467; ss. 1, 6, ch. 77-469; s. 1, ch. 78-308; s. 56, ch. 79-40; s. 5, ch. 80-126; s. 3, ch. 80-131; s. 8, ch. 80-242; s. 1, ch. 80-243; s. 3, ch. 81-214; s. 59, ch. 81-259; ss. 2, 13, ch. 83-76; s. 6, ch. 84-114; s. 3, ch. 84-266; s. 4, ch. 85-246; s. 13, ch. 86-149; s. 10, ch. 86-183; s. 5, ch. 87-373; s. 5, ch. 88-382; s. 1, ch. 89-126; s. 56, ch. 89-169; s. 43, ch. 89-526; s. 5, ch. 90-274; s. 2, ch. 92-122; s. 52, ch. 92-279; s. 55, ch. 92-326; s. 4, ch. 93-193; s. 1, ch. 93-285; s. 4, ch. 94-259; s. 1422, ch. 95-147; s. 18, ch. 95-154; s. 1, ch. 95-338; s. 2, ch. 96-186; s. 4, ch. 96-368; s. 1, ch. 97-154; ss. 2, 7, ch. 97-180; s. 1, ch. 98-138; s. 2, ch. 98-302; s. 3, ch. 98-413; s. 51, ch. 99-2; s. 3, ch. 99-7; s. 1, ch. 99-9; s. 25, ch. 99-255; ss. 4, 22, ch. 99-392; s. 18, ch. 2000-151; ss. 2, 4, 28, ch. 2000-169; s. 2, ch. 2000-347; s. 17, ch. 2001-60; s. 42, ch. 2001-125; s. 18, ch. 2002-273; s. 8, ch. 2004-5; s. 1, ch. 2005-253; s. 6, ch. 2007-196; s. 15, ch. 2007-217; s. 2, ch. 2008-139; s. 1, ch. 2008-142; s. 1, ch. 2009-209; s. 3, ch. 2010-179; s. 6, ch. 2011-68; s. 11, ch. 2012-5; s. 1, ch. 2012-126; s. 2, ch. 2012-222; s. 61, ch. 2014-22.

### **121.025 Administrator; powers and duties.—**

The secretary of the Department of Management Services shall be the administrator of the retirement and pension systems assigned or transferred to the Department of Management Services by law and shall have the authority to sign the contracts necessary to carry out the duties and responsibilities assigned by law to the Department of Management Services.

**History.**—s. 1, ch. 75-248; s. 53, ch. 92-279; s. 55, ch. 92-326; s. 25, ch. 94-249; s. 26, ch. 99-255.

### **121.031 Administration of system; appropriation; oaths; actuarial studies; public records.—**

(1) The Department of Management Services has the authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon the department and to adopt rules as are necessary for the effective and efficient administration of this system. The funds to pay the expenses for administration of the system are hereby appropriated from the interest earned on investments made for the Retirement System Trust Fund and the assessments allowed under chapter 650.

(2) The Department of Management Services is authorized to require oaths, by affidavit or otherwise, and acknowledgments from persons in connection with the administration of its duties and responsibilities under this chapter.

(3) The administrator shall cause an actuarial study of the system to be made at least annually and shall report the results of such study to the Legislature by December 31 prior to the next legislative session. The study shall, at a minimum, conform to the requirements of s. 112.63, with the following exceptions and additions:

(a) The valuation of plan assets shall be based on a 5-year averaging methodology such as that specified in the United States Department of Treasury Regulations, 26 C.F.R. s. 1.412(c)(2)-1 in effect on August 16, 2006,

or a similar accepted approach designed to attenuate fluctuations in asset values.

(b) The study shall include a narrative explaining the changes in the covered group over the period between actuarial valuations and the impact of those changes on actuarial results.

(c) When substantial changes in actuarial assumptions have been made, the study shall reflect the results of an actuarial assumption as of the current date based on the assumptions utilized in the prior actuarial report.

(d) The study shall include an analysis of the changes in actuarial valuation results by the factors generating those changes. Such analysis shall reconcile the current actuarial valuation results with those results from the prior valuation.

(e) The study shall include measures of funding status and funding progress designed to facilitate the assessment of trends over several actuarial valuations with respect to the overall solvency of the system. Such measures shall be adopted by the department and shall be used consistently in all actuarial valuations performed on the system.

(f) The actuarial model used to determine the adequate level of funding for the Florida Retirement System shall include a specific rate stabilization mechanism, as prescribed herein. It is the intent of the Legislature to maintain as a reserve a specific portion of any actuarial surplus, and to use such reserve for the purpose of offsetting future unfunded liabilities caused by experience losses, thereby minimizing the risk of future increases in contribution rates. It is further the intent of the Legislature that the use of any excess above the reserve to offset retirement system normal costs shall be in a manner that will allow system employers to plan appropriately for resulting cost reductions and subsequent cost increases. The rate stabilization mechanism shall operate as follows:

1. The actuarial surplus shall be the value of actuarial assets over actuarial liabilities, as is determined on the preceding June 30 or as may be estimated on the preceding December 31.

2. The full amount of any experience loss shall be offset, to the extent possible, by any actuarial surplus.

3. If the actuarial surplus exceeds 5 percent of actuarial liabilities, one-half of the excess may be used to offset total retirement system costs. In addition, if the actuarial surplus exceeds 10 percent of actuarial liabilities, an additional one-fourth of the excess above 10 percent may be used to offset total retirement system costs. In addition, if the actuarial surplus exceeds 15 percent of actuarial liabilities, an additional one-fourth of the excess above 15 percent may be used to offset total retirement system costs.

4. Any surplus amounts available to offset total retirement system costs pursuant to subparagraph 3. should be amortized each year over a 10-year rolling period on a level-dollar basis.

(4) Notwithstanding the provisions of s. 112.64(4) to the contrary, the net increase, if any, in unfunded liability under the system arising from significant system amendments adopted or changes in assumptions shall be amortized within 30 plan years.

(5) The names and addresses of retirees are confidential and exempt from the provisions of s. 119.07(1) to the extent that no state or local governmental agency may provide the names or addresses of such persons in aggregate, compiled, or list form to any person except to a public agency engaged in official business. However, a state or local government agency may provide the names and addresses of retirees from that agency to a bargaining agent as defined in s. 447.203(12) or to a retiree organization for official business use. Lists of names or addresses of retirees may be exchanged by public agencies, but such lists shall not be provided to, or open for inspection by, the public. Any person may view or copy any individual's retirement records at the Department of Management Services, one record at a time, or may obtain information by a separate written request for a named individual for which information is desired.

(6) Unless prior written approval is obtained from the department or state board, any promotional materials or advertisements that, directly or indirectly, refer to the "Florida Retirement System" or the "FRS" must contain a disclaimer that the information is not approved or endorsed by the Florida Retirement System.

**History.**—s. 3, ch. 70-112; s. 2, ch. 75-248; s. 6, ch. 81-295; s. 3, ch. 83-76; s. 4, ch. 84-266; ss. 64, 68, ch. 86-168; s. 6, ch. 88-382; s. 6, ch. 90-274; s. 80, ch. 91-45; s. 3, ch. 92-122; s. 54, ch. 92-279; s. 55, ch. 92-326; s. 26, ch. 94-249; s. 42, ch. 96-406; s. 28, ch. 99-255; s. 5, ch. 99-392; s. 19, ch. 2000-151; s. 26, ch. 2000-169; s. 39, ch. 2000-371; s. 10, ch. 2004-234; s. 3, ch. 2008-139; s. 2, ch. 2009-209.

**121.0312 Review; actuarial valuation report; contribution rate determination process.**—The Governor, Chief Financial Officer, and Attorney General, sitting as the Board of Trustees of the State Board of Administration, shall review the actuarial valuation report prepared in accordance with the provisions of this chapter. The Board shall review the process by which Florida Retirement System contribution rates are determined and recommend and submit any comments regarding the process to the Legislature.

**History.**—s. 20, ch. 99-392; s. 6, ch. 2003-6.

**121.045 Consolidation of liabilities and assets; existing systems.**—

(1) Effective December 1, 1970, the existing systems and the Florida Retirement System shall be consolidated and the system shall assume:

(a) All liabilities related to the payment of benefits to members and their beneficiaries; and

(b) All obligations in regard to funding and administering benefits accrued for the benefit of members, beneficiaries, and survivors.

(2) The administrator or trustees, where there may be a conflict in law, of the respective trust fund or funds held under the existing systems shall, as of December 1, 1970, cause to be transferred to the system trust funds all assets, including moneys, securities, and other property accumulated to date, as well as all liabilities and obligations connected therewith. Upon such transfer of assets, liabilities, and obligations, the administrator shall become the trustee of any trust fund or funds transferred to this system.

**History.**—s. 4, ch. 70-112.

**121.046 Merger of the Judicial Retirement System into the Florida Retirement System Act.**—

(1) Any person who is elected or appointed to office in this state as Supreme Court justice, district court of appeal judge, or circuit judge on or after July 1, 1972, shall not be eligible for membership, rights, or any privileges under former chapter 123, the Judicial Retirement System, unless such justice or judge is already a member of said retirement system when elected or appointed to such office.

(2) Former chapter 123, the Judicial Retirement System, is hereby merged as a separate instrument appended to this chapter, the "Florida Retirement System Act," and the administration of said former chapter 123, the Judicial Retirement System, shall be merged into the administration of the Florida Retirement System.

(3) The rights of members of the Judicial Retirement System established by former chapter 123 shall not be impaired, nor shall their benefits be reduced, by virtue of any provision of this act or any provision of the Florida Retirement System Act, except that if a member of the Judicial Retirement System, otherwise eligible, elects, prior to June 30, 1973, to transfer to the Florida Retirement System, he or she shall be transferred to the Florida Retirement System and, from the date his or her transfer becomes effective, shall be subject to the provisions of the Florida Retirement System established by this chapter, together with any relevant provisions of this act and shall have his or her benefits calculated accordingly.

(4) Any member of the Judicial Retirement System who elects to transfer to the Florida Retirement System, and every Supreme Court justice, district court of appeal judge, or circuit judge who is elected or appointed to judicial office on or after July 1, 1972, who is not already a member of the Judicial Retirement System when elected or appointed to such office, shall be subject to the provisions of this chapter and of this act which are not in conflict or inconsistent with the provisions of Art. V of the State Constitution, and any retired member on temporary judicial assignment shall continue to receive retirement benefits and such other compensation as may be authorized by s. 25.073, and Art. V of the State Constitution.

(5)(a) Effective July 1, 1972, the Judicial Retirement System established by former chapter 123 shall be merged into this chapter, the Florida Retirement System Act, and the Florida Retirement System shall assume:

1. All liabilities related to the payment of benefits to members and their beneficiaries;

2. The administration and payment of benefits now accrued or which may accrue in the future for the benefit of members, beneficiaries and survivors; and

3. All obligations in regard to funding, including any actuarial deficit which may now or hereafter exist in the Judicial Retirement System.

(b) To effectuate the merger required by this section, the director of the Division of Retirement, as administrator of the retirement systems hereby merged, shall, as of July 1, 1972, cause to be transferred to the Florida Retirement System all assets, including money, securities, and other property held for the judicial

retirement system, as well as all liabilities and obligations of said system. Upon such transfer of assets, liabilities, and obligations, the administrator shall become the trustee of any trust fund or funds transferred to the Florida Retirement System.

**History.**—ss. 1, 3, ch. 72-345; s. 769, ch. 95-147; s. 52, ch. 99-2.

**121.047 Consolidation of liabilities and assets; Institute of Food and Agricultural Sciences Supplemental Retirement Program; restriction.—**

(1) Effective July 1, 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program, as established under s. 121.40, shall be consolidated under the Florida Retirement System and the system shall assume:

(a) All liabilities related to the payment of supplemental monthly benefits to retired employees of the institute and their surviving beneficiaries; and

(b) All obligations in regard to funding and administering benefits accrued for the benefit of retired employees of the institute and their surviving beneficiaries.

(2) The administrator shall, as of July 1, 2007, cause to be transferred to the trust fund of the Florida Retirement System all assets of the Institute of Food and Agricultural Sciences Supplemental Retirement Trust Fund, including moneys, securities, and other property accumulated to date, as well as all liabilities and obligations connected therewith. Upon such transfer of assets, liabilities, and obligations, the Institute of Food and Agricultural Sciences Supplemental Retirement Trust Fund shall be abolished and the administrator shall become the trustee of any funds transferred to the Florida Retirement System.

(3) Participation in the Institute of Food and Agricultural Sciences Supplemental Retirement Program does not constitute membership in the Florida Retirement System.

**History.**—s. 2, ch. 2007-100.

**121.051 Participation in the system.—**

**(1) COMPULSORY PARTICIPATION.—**

(a) Participation in the Florida Retirement System is compulsory for all officers and employees, except elected officers who meet the requirements of s. 121.052(3), who are employed on or after December 1, 1970, by an employer other than those referred to in paragraph (2)(b). Each officer or employee, as a condition of employment, becomes a member of the system on the date of employment, except that a person who is retired from any state retirement system and is reemployed on or after December 1, 1970, may not renew his or her membership in any state retirement system except as provided in s. 121.091(4)(h) for a person who recovers from disability, as provided in s. 121.053 for a person who is elected to public office, and, effective July 1, 1991, as provided in s. 121.122 for all other retirees.

1. Officers and employees of the University Athletic Association, Inc., a nonprofit association connected with the University of Florida, employed on and after July 1, 1979, may not participate in any state-supported retirement system.

2. Any person appointed on or after July 1, 1989, to a faculty position in a college at the J. Hillis Miller Health Center at the University of Florida or the Medical Center at the University of South Florida which has a faculty practice plan adopted by rule by the Board of Regents may not participate in the Florida Retirement System. Effective July 1, 2008, any person appointed to a faculty position, including clinical faculty, in a college at a state university that has a faculty practice plan authorized by the Board of Governors may not participate in the Florida Retirement System. A faculty member so appointed shall participate in the optional retirement program for the State University System notwithstanding s. 121.35(2)(a). For purposes of this subparagraph, the term:

a. “Faculty position” means a position assigned the principal responsibility of teaching, research, or public service activities or administrative responsibility directly related to the academic mission of the college.

b. “Clinical faculty” means a faculty position appointment in conjunction with a professional position in a hospital or other clinical environment at a college.

c. “Faculty practice plan” includes professional services to patients, institutions, or other parties which are rendered by the clinical faculty employed by a college that has a faculty practice plan at a state university authorized by the Board of Governors.

(b) After June 30, 1978, the compulsory participation provisions of paragraph (a) shall not be construed to require participation in the Florida Retirement System by a member of an existing system who is reemployed after terminating employment, or who otherwise interrupts his or her employment under an existing system, provided the member leaves his or her accumulated contributions on deposit under the existing system. Such member shall continue to have membership in the existing system upon reemployment or resumption of employment and shall not be permitted to become a member of the Florida Retirement System, except by transferring to the Florida Retirement System as authorized by paragraph (2)(a) or s. 121.052 or by being reemployed after terminating employment and receiving a refund of his or her accumulated contributions made to the existing system.

(c)1. After June 30, 1983, a member of an existing system who is reemployed after terminating employment shall have at the time of reemployment the option of selecting to remain in the existing retirement system or to transfer to the Florida Retirement System. Failure to submit such selection in writing to the Department of Management Services within 6 months of reemployment shall result in compulsory membership in the Florida Retirement System.

2. After June 30, 1988, the provisions of subparagraph 1. shall not apply to a member of an existing system who is reemployed within 12 months after terminating employment. Such member shall continue to have membership in the existing system upon reemployment and shall not be permitted to become a member of the Florida Retirement System, except by transferring to that system as provided in ss. 121.052 and 121.055.

(d) The following persons are not eligible to participate in the Florida Retirement System:

1. Employees of a not-for-profit corporation or association created by the Board of County Commissioners of Palm Beach County for the purpose of owning, operating, or managing a public bus transit system formerly operated or managed by a private corporation subject to 49 U.S.C. s. 5333(b).

2. Persons who perform services as a consultant or an independent contractor, as defined by the division.

(2) OPTIONAL PARTICIPATION.—

(a)1. Any officer or employee who is a member of an existing system, except any officer or employee of any nonprofit professional association or corporation, may elect, if eligible, to become a member of this system at any time between April 15, 1971, and June 1, 1971, inclusive, by notifying his or her employer in writing of the desire to transfer membership from the existing system to this system. Any officer or employee who was a member of an existing system on December 1, 1970, and who did not elect to become a member of this system shall continue to be covered under the existing system subject to the provisions of s. 121.045. A person who has retired under any state retirement system shall not be eligible to transfer to the Florida Retirement System created by this chapter subsequent to such retirement. Any officer or employee who, prior to July 1, 1947, filed a written rejection of membership in a state retirement system and who continues employment without participating in the Florida Retirement System may withdraw the rejection in writing and, if otherwise eligible, participate in the Florida Retirement System and purchase prior service in accordance with this chapter. Any former member of an existing system who was permitted to transfer to the Florida Retirement System while employed by the University Athletic Association, Inc., a nonprofit association connected with the University of Florida, during this or subsequent transfer periods, contrary to the provisions of this paragraph, is hereby confirmed as a member of the Florida Retirement System, the provisions of this paragraph notwithstanding. Any officer or employee of the University Athletic Association, Inc., employed prior to July 1, 1979, who was a member of the Florida Retirement System and who chose in writing on a University Athletic Association Plan Participation Election form, between July 1, 1979, and March 31, 1980, inclusively, to terminate his or her participation in the Florida Retirement System shall hereby have such termination of participation confirmed and declared irrevocable retroactive to the date Florida Retirement System retirement contributions ceased to be reported for such officer or employee. The following specific conditions shall apply to any such officer or employee whose participation was so terminated: The officer or employee shall retain all creditable service earned in the Florida Retirement System through the month that retirement contributions ceased to be reported and no creditable service shall be earned after such month; the officer or employee shall not be eligible for disability retirement or death in line of duty benefits if such occurred after the date that participation terminated; and, the officer or employee may participate in the

Florida Retirement System in the future only if employed by a participating employer in a regularly established position.

2. Any member transferring from the existing system under chapter 238 shall retain rights to survivor benefits under that chapter through November 30, 1975, or until fully insured for disability benefits under social security, whichever is the earliest date, and thereafter no such rights shall exist.

3. Any officer or employee who is a member of an existing system on April 15, 1972, and who was eligible to transfer to this system under the provisions of subparagraph 1., but who elected to remain in the existing system, may elect, if eligible under the Social Security Act, 42 U.S.C. s. 418(d)(6)(F), to become a member of this system at any time between April 15, 1972, and June 30, 1972, inclusive, by notifying his or her employer in writing of the desire to transfer membership from an existing system to this system. Such transfer shall be subject to the following conditions:

a. All persons electing to transfer to the Florida Retirement System under this subparagraph shall be transferred on July 1, 1972, and shall thereafter be subject to the provisions of the Florida Retirement System retroactively to November 30, 1970, and at retirement have their benefits calculated in accordance with the provisions of s. 121.091.

b. Social security coverage incidental to such elective membership in the Florida Retirement System shall be effective November 30, 1970, and all amounts required from a member for retroactive social security coverage shall, at the time such election is made, be deducted from the individual account of the member, and the difference between the amount remaining in the individual account of such member and the total amount which such member would have contributed had he or she become a member of the Florida Retirement System on November 30, 1970, shall be paid into the system trust fund and added to the member's individual account prior to July 1, 1975, or by his or her date of retirement, if earlier. Interest at the rate of 8 percent per annum, compounded annually until paid, shall be charged on any balance remaining unpaid on said date.

c. There is appropriated out of the system trust fund into the <sup>2</sup>Social Security Contribution Trust Fund the amount required by federal laws and regulations to be contributed with respect to social security coverage for the years after November 30, 1970, of the members of an existing system who transfer to the Florida Retirement System in accordance with this subparagraph and who qualify for retroactive social security coverage. The amount paid from this appropriation with respect to the employees of any employer shall be charged to the employing agency. There shall be credited against this charge the difference between the matching contributions actually made for the affected employees from November 30, 1970, to June 30, 1972, and the amount of matching contributions that would have been required under the Florida Retirement System.

d. The net amounts charged the employing agencies for employees transferring to the Florida

Retirement System under this subparagraph shall be paid to the system trust fund prior to July 1, 1975. Interest at the rate of 8 percent per annum, compounded annually until paid, shall be charged on any balance remaining unpaid on said date.

e. The administrator shall request such modification of the state's agreement with the Social Security Administration, or any referendum required under the Social Security Act governing social security coverage, as may be required to implement the provisions of this law. Retroactive social security coverage for service with an employer prior to November 30, 1970, shall not be provided for any member who was not covered under the agreement as of November 30, 1970.

4. Any officer or employee who was a member of an existing system on December 1, 1970, and who is still a member of an existing system, except any officer or employee of any nonprofit professional association or corporation, may elect, if eligible, to become a member of this system at any time between September 1, 1974, and November 30, 1974, inclusive, by notifying his or her employer in writing of the desire to transfer membership from the existing system to this system. This decision to transfer or not to transfer shall become irrevocable on November 30, 1974. All members electing to transfer during the transfer period shall become members of the Florida Retirement System on January 1, 1975, and shall be subject to the provisions of the Florida Retirement System on and after that date. Any officer or employee who was a member of an existing system on December 1, 1970, and who does not elect to become a member of this system shall continue to be covered under the existing system, subject to the provisions of s. 121.045. Any member transferring from the Teachers' Retirement System of Florida under chapter 238 to the Florida Retirement System on January 1, 1975, shall retain rights to survivor benefits under chapter 238 from January 1, 1975, through December 31, 1979, or until fully insured for disability benefits under the Social Security Act, whichever is the earliest date, and thereafter no such rights shall exist.

5.a. Any officer or employee who was a member of an existing system on December 1, 1970, and who is still a member of an existing system, except any officer or employee of any nonprofit professional association or corporation, may elect, if eligible, to become a member of this system at any time between January 2, 1982, and May 31, 1982, inclusive, by notifying his or her employer in writing of the desire to transfer membership from the existing system to this system. This decision to transfer or not to transfer shall become irrevocable on May 31, 1982. All members electing to transfer during the transfer period shall become members of the Florida Retirement System on July 1, 1982, and shall be subject to the provisions of the Florida Retirement System on and after that date. Any officer or employee who was a member of an existing system on December 1, 1970, and who does not elect to become a member of this system shall continue to be covered under the existing system, subject to the provisions of s. 121.045. Any member transferring from the Teachers' Retirement System under chapter 238 to the Florida Retirement

System on January 1, 1979, shall retain rights to survivor benefits under chapter 238 from January 1, 1979, through December 31, 1983, or until fully insured for disability benefits under the federal Social Security Act, whichever is the earliest date, and thereafter no such rights shall exist. Any such member transferring to the Florida Retirement System on July 1, 1982, shall retain rights to survivor benefits under chapter 238 from July 1, 1982, through June 30, 1987, or until fully insured for disability benefits under the federal Social Security Act, whichever is the earliest date, and thereafter no such rights shall exist.

b. Any deficit, as determined by the state actuary, accruing to the Survivors' Benefit Trust Fund of the Teachers' Retirement System and resulting from the passage of chapter 78-308, Laws of Florida, and chapter 80-242, Laws of Florida, shall become an obligation of the Florida Retirement System Trust Fund.

6. Any active member of an existing system who was not employed in a covered position during a time when transfer to the Florida Retirement System was allowed as described in rule 22B-1.004(2)(a), Florida Administrative Code, or as provided in paragraph (1)(c) of this section, may elect, if eligible, to become a member of this system at any time between January 1, 1991, and May 29, 1991, inclusive, by notifying his or her employer in writing of the desire to transfer membership from the existing system to this system. The decision to transfer or not to transfer shall become irrevocable on May 29, 1991. Failure to notify the employer shall result in compulsory membership in the existing system. All members electing to transfer during the transfer period shall become members of the Florida Retirement System on July 1, 1991, and shall be subject to the provisions of the Florida Retirement System on and after that date. Any member so transferring from the existing system under chapter 238 to the Florida Retirement System on July 1, 1991, shall retain rights to survivor benefits under that chapter from July 1, 1991, through June 30, 1996, or until fully insured for benefits under the federal Social Security Act, whichever is the earliest date, and thereafter no such rights shall exist.

(b)1. The governing body of any municipality, metropolitan planning organization, or special district in the state may elect to participate in the Florida Retirement System upon proper application to the administrator and may cover all of its units as approved by the Secretary of Health and Human Services and the administrator. The department shall adopt rules establishing procedures for the submission of documents necessary for such application. Before being approved for participation in the system, the governing body of a municipality, metropolitan planning organization, or special district that has a local retirement system must submit to the administrator a certified financial statement showing the condition of the local retirement system within 3 months before the proposed effective date of membership in the Florida Retirement System. The statement must be certified by a recognized accounting firm that is independent of the local retirement system. All required documents necessary for extending Florida Retirement System coverage must be received by the department

for consideration at least 15 days before the proposed effective date of coverage. If the municipality, metropolitan planning organization, or special district does not comply with this requirement, the department may require that the effective date of coverage be changed.

2. A municipality, metropolitan planning organization, or special district that has an existing retirement system covering the employees in the units that are to be brought under the Florida Retirement System may participate only after holding a referendum in which all employees in the affected units have the right to participate. Only those employees electing coverage under the Florida Retirement System by affirmative vote in the referendum are eligible for coverage under this chapter, and those not participating or electing not to be covered by the Florida Retirement System shall remain in their present systems and are not eligible for coverage under this chapter. After the referendum is held, all future employees are compulsory members of the Florida Retirement System.

3. At the time of joining the Florida Retirement System, the governing body of a municipality, metropolitan planning organization, or special district complying with subparagraph 1. may elect to provide, or not provide, benefits based on past service of officers and employees as described in s. 121.081(1). However, if such employer elects to provide past service benefits, such benefits must be provided for all officers and employees of its covered group.

4. Once this election is made and approved it may not be revoked, except pursuant to subparagraphs 5. and 6., and all present officers and employees electing coverage and all future officers and employees are compulsory members of the Florida Retirement System.

5. Subject to subparagraph 6., the governing body of a hospital licensed under chapter 395 which is governed by the governing body of a special district as defined in s. 189.012 or by the board of trustees of a public health trust created under s. 154.07, hereinafter referred to as "hospital district," and which participates in the Florida Retirement System, may elect to cease participation in the system with regard to future employees in accordance with the following:

a. No more than 30 days and at least 7 days before adopting a resolution to partially withdraw from the system and establish an alternative retirement plan for future employees, a public hearing must be held on the proposed withdrawal and proposed alternative plan.

b. From 7 to 15 days before such hearing, notice of intent to withdraw, specifying the time and place of the hearing, must be provided in writing to employees of the hospital district proposing partial withdrawal and must be published in a newspaper of general circulation in the area affected, as provided by ss. 50.011-50.031. Proof of publication must be submitted to the Department of Management Services.

c. The governing body of a hospital district seeking to partially withdraw from the system must, before such hearing, have an actuarial report prepared and certified by an enrolled actuary, as defined in s. 112.625, illustrating the cost to the hospital district of providing, through the retirement plan that the hospital district is to

adopt, benefits for new employees comparable to those provided under the system.

d. Upon meeting all applicable requirements of this subparagraph, and subject to subparagraph 6., partial withdrawal from the system and adoption of the alternative retirement plan may be accomplished by resolution duly adopted by the hospital district board. The hospital district board must provide written notice of such withdrawal to the division by mailing a copy of the resolution to the division, postmarked by December 15, 1995. The withdrawal shall take effect January 1, 1996.

6. Following the adoption of a resolution under subparagraph 5.d., all employees of the withdrawing hospital district who were members of the system before January 1, 1996, shall remain as members of the system for as long as they are employees of the hospital district, and all rights, duties, and obligations between the hospital district, the system, and the employees remain in full force and effect. Any employee who is hired or appointed on or after January 1, 1996, may not participate in the system, and the withdrawing hospital district has no obligation to the system with respect to such employees.

(c) Employees of public community colleges or charter technical career centers sponsored by public community colleges, designated in s. 1000.21(3), who are members of the Regular Class of the Florida Retirement System and who comply with the criteria set forth in this paragraph and s. 1012.875 may, in lieu of participating in the Florida Retirement System, elect to withdraw from the system altogether and participate in the State Community College System Optional Retirement Program provided by the employing agency under s. 1012.875.

1.a. Through June 30, 2001, the cost to the employer for benefits under the optional retirement program equals the normal cost portion of the employer retirement contribution which would be required if the employee were a member of the pension plan's Regular Class, plus the portion of the contribution rate required by s. 112.363(8) which would otherwise be assigned to the Retiree Health Insurance Subsidy Trust Fund.

b. Effective July 1, 2001, through June 30, 2011, each employer shall contribute on behalf of each member of the optional program an amount equal to 10.43 percent of the employee's gross monthly compensation. The employer shall deduct an amount for the administration of the program.

c. Effective July 1, 2011, through June 30, 2012, each member shall contribute an amount equal to the employee contribution required under s. 121.71(3). The employer shall contribute on behalf of each program member an amount equal to the difference between 10.43 percent of the employee's gross monthly compensation and the employee's required contribution based on the employee's gross monthly compensation.

d. Effective July 1, 2012, each member shall contribute an amount equal to the employee contribution required under s. 121.71(3). The employer shall contribute on behalf of each program member an amount equal to the difference between 8.15 percent of the employee's gross monthly compensation and the

employee's required contribution based on the employee's gross monthly compensation.

e. The employer shall contribute an additional amount to the Florida Retirement System Trust Fund equal to the unfunded actuarial accrued liability portion of the Regular Class contribution rate.

2. The decision to participate in the optional retirement program is irrevocable as long as the employee holds a position eligible for participation, except as provided in subparagraph 3. Any service creditable under the Florida Retirement System is retained after the member withdraws from the system; however, additional service credit in the system may not be earned while a member of the optional retirement program.

3. An employee who has elected to participate in the optional retirement program shall have one opportunity, at the employee's discretion, to transfer from the optional retirement program to the pension plan of the Florida Retirement System or to the investment plan established under part II of this chapter, subject to the terms of the applicable optional retirement program contracts.

a. If the employee chooses to move to the investment plan, any contributions, interest, and earnings creditable to the employee under the optional retirement program are retained by the employee in the optional retirement program, and the applicable provisions of s. 121.4501(4) govern the election.

b. If the employee chooses to move to the pension plan of the Florida Retirement System, the employee shall receive service credit equal to his or her years of service under the optional retirement program.

(I) The cost for such credit is the amount representing the present value of the employee's accumulated benefit obligation for the affected period of service. The cost shall be calculated as if the benefit commencement occurs on the first date the employee becomes eligible for unreduced benefits, using the discount rate and other relevant actuarial assumptions that were used to value the Florida Retirement System Pension Plan liabilities in the most recent actuarial valuation. The calculation must include any service already maintained under the pension plan in addition to the years under the optional retirement program. The present value of any service already maintained must be applied as a credit to total cost resulting from the calculation. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary.

(II) The employee must transfer from his or her optional retirement program account and from other employee moneys as necessary, a sum representing the present value of the employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and service in the optional retirement program.

4. Participation in the optional retirement program is limited to employees who satisfy the following eligibility criteria:

a. The employee is otherwise eligible for membership or renewed membership in the Regular Class of the

Florida Retirement System, as provided in s. 121.021(11) and (12) or s. 121.122.

b. The employee is employed in a full-time position classified in the Accounting Manual for Florida's College System as:

(I) Instructional; or

(II) Executive Management, Instructional Management, or Institutional Management and the community college determines that recruiting to fill a vacancy in the position is to be conducted in the national or regional market, and the duties and responsibilities of the position include the formulation, interpretation, or implementation of policies, or the performance of functions that are unique or specialized within higher education and that frequently support the mission of the community college.

c. The employee is employed in a position not included in the Senior Management Service Class of the Florida Retirement System as described in s. 121.055.

5. Members of the program are subject to the same reemployment limitations, renewed membership provisions, and forfeiture provisions applicable to regular members of the Florida Retirement System under ss. 121.091(9), 121.122, and 121.091(5), respectively. A member who receives a program distribution funded by employer and required employee contributions is deemed to be retired from a state-administered retirement system if the member is subsequently employed with an employer that participates in the Florida Retirement System.

6. Eligible community college employees are compulsory members of the Florida Retirement System until, pursuant to s. 1012.875, a written election to withdraw from the system and participate in the optional retirement program is filed with the program administrator and received by the division.

a. A community college employee whose program eligibility results from initial employment shall be enrolled in the optional retirement program retroactive to the first day of eligible employment. The employer and employee retirement contributions paid through the month of the employee plan change shall be transferred to the community college to the employee's optional program account, and, effective the first day of the next month, the employer shall pay the applicable contributions based upon subparagraph 1.

b. A community college employee whose program eligibility is due to the subsequent designation of the employee's position as one of those specified in subparagraph 4., or due to the employee's appointment, promotion, transfer, or reclassification to a position specified in subparagraph 4., must be enrolled in the program on the first day of the first full calendar month that such change in status becomes effective. The employer and employee retirement contributions paid from the effective date through the month of the employee plan change must be transferred to the community college to the employee's optional program account, and, effective the first day of the next month, the employer shall pay the applicable contributions based upon subparagraph 1.

7. Effective July 1, 2003, through December 31, 2008, any member of the optional retirement program



who has service credit in the pension plan of the Florida Retirement System for the period between his or her first eligibility to transfer from the pension plan to the optional retirement program and the actual date of transfer may, during employment, transfer to the optional retirement program a sum representing the present value of the accumulated benefit obligation under the defined benefit retirement program for the period of service credit. Upon transfer, all service credit previously earned under the pension plan during this period is nullified for purposes of entitlement to a future benefit under the pension plan.

(d) The governing body of a charter school or a charter technical career center may elect to participate in the system upon proper application to the administrator and shall cover its units as approved by the Secretary of Health and Human Services and the administrator. Once this election is made and approved, it may not be revoked, and all present officers and employees selecting coverage under this chapter and all future officers and employees shall be compulsory members of the Florida Retirement System.

(e) Notwithstanding any other provision of this chapter to the contrary, any independent participating agency that has failed to report the employees of a dependent governmental entity within its jurisdiction for membership in the Florida Retirement System as required under this chapter shall enroll in the system, effective July 1, 1996, all employees filling a regularly established position who are not currently participating in a retirement plan provided by the dependent entity. Employees of the dependent entity participating in such a retirement plan on July 1, 1996, may remain in that plan or participate in the Florida Retirement System and shall make such election in writing. Such employees are eligible to claim past service as provided in s. 121.081. All eligible employees hired on or after July 1, 1996, by any such dependent entity shall be compulsory members of the Florida Retirement System. Any independent participating agency shall be responsible for identifying all such dependent governmental entities within its jurisdiction and for providing to the division a list of all employees of such entities as of July 1, 1997.

(f)1. If an employer that participates in the Florida Retirement System undertakes the transfer, merger, or consolidation of governmental services or assumes the functions and activities of an employing governmental entity that was not an employer under the system, the employer must notify the department at least 60 days before such action and provide documentation as required by the department. The transfer, merger, or consolidation of governmental services or assumption of governmental functions and activities must occur between public employers. The current or former employer may pay the employees' past service cost, unless prohibited under this chapter. This subparagraph does not apply to the transfer, merger, or consolidation of governmental services or assumption of functions and activities of a public entity under a leasing agreement having a coemployer relationship. Employers and employees of a public governmental employer whose service is covered by a leasing agreement under s. 110.191, any other leasing agreement, or a coemployer

relationship are not eligible to participate in the Florida Retirement System.

2. If the agency to which a member's employing unit is transferred, merged, or consolidated does not participate in the Florida Retirement System, a member may elect in writing to remain in the Florida Retirement System or to transfer to the local retirement system operated by the agency. If the agency does not participate in a local retirement system, the member shall continue membership in the Florida Retirement System. In either case, membership continues for as long as the member is employed by the agency to which his or her unit was transferred, merged, or consolidated.

(3) **SOCIAL SECURITY COVERAGE.**—Social security coverage shall be provided for all officers and employees who become members under subsection (1) or subsection (2). Any modification of the present agreement with the Social Security Administration, or referendum required under the Social Security Act, for the purpose of providing social security coverage for any member shall be requested by the state agency in compliance with the applicable provisions of the Social Security Act governing such coverage. However, retroactive social security coverage for service before December 1, 1970, with the employer may not be provided for a member who was not covered under the agreement as of November 30, 1970. The employer-paid employee contributions specified in s. 121.71(3) are subject to taxes imposed under the Federal Insurance Contributions Act, 26 U.S.C. ss. 3101-3128.

(4) **INFORMATION REQUIRED.**—The employer and employee shall furnish the administrator with such information as he or she may request for the proper enrollment of officers and employees in the system.

(5) **RIGHTS LIMITED.**—

(a) Participation in the system shall not give any member the right to be retained in the employ of the employer or, upon dismissal, to have any right or interest in the fund other than herein provided.

(b) A member who is convicted by a court of competent jurisdiction of causing a shortage in a public account, when such shortage is certified by the Auditor General or a certified public accountant, may not retire or receive any benefits under this chapter so long as such shortage exists.

(6) **SEASONAL STATE EMPLOYMENT; BLIND VENDING FACILITY OPERATORS.**—

(a) Seasonal state employment shall be included under this chapter, and the time limit and procedure for claiming same as set forth in s. 122.07 shall continue under this chapter for those members transferring to this system and for all new members.

(b)1. All blind or partially sighted persons employed or licensed by the Division of Blind Services as vending facility operators on or after December 1, 1970, and prior to July 1, 1996, are hereby declared to be state employees within the meaning of this chapter, and all vending facility operators licensed and employed during that period shall be compulsory members of the Florida Retirement System in compliance with this chapter for as long as the member is a vending facility operator, except as provided in subparagraph 3.

2. Blindness shall not be deemed a retirement disability within the provisions of this chapter for such members as are contemplated by this paragraph.

3. Any vending facility operator as described in subparagraph 1. may elect, on or before July 31, 1996, to withdraw from the Florida Retirement System as provided in s. 413.051(11). The election to withdraw shall take effect as of July 1, 1996, and the decision to withdraw is irrevocable. A vending facility operator who withdraws from the Florida Retirement System as provided in this subparagraph shall retain all creditable service earned in the Florida Retirement System through the month that retirement contributions ceased to be reported, and no creditable service shall be earned as a vending facility operator after such month. However, any such person may participate in the Florida Retirement System in the future if employed by a participating employer in a covered position.

4. All blind or partially sighted persons employed or licensed by the Division of Blind Services as vending facility operators on or after July 1, 1996, shall be independent contractors within the meaning of this chapter and shall not be eligible for membership in the Florida Retirement System.

(7) **JOINT REPRESENTATIVES; FEDERAL CIVIL SERVICE.**—All state and county cooperative extension personnel holding appointments by the United States Department of Agriculture for extension work in agriculture and home economics in the state shall be joint representatives of the University of Florida and the United States Department of Agriculture unless otherwise expressly provided in the project agreement. Such personnel shall be deemed governed by the requirements of Federal Civil Service, as written in the agreement between the University of Florida and the United States Department of Agriculture. Such personnel so governed by the requirements of Federal Civil Service shall be prohibited from participating in any retirement or social security program or act administered by the state except those members covered under s. 238.13, as of November 30, 1970.

(8) **DIVISION OF REHABILITATION AND LIQUIDATION EMPLOYEES MEMBERSHIP.**—Effective July 1, 1994, the regular receivership employees of the Division of Rehabilitation and Liquidation of the Department of Financial Services who are assigned to established positions and are subject to established rules and regulations regarding discipline, pay, classification, and time and attendance are hereby declared to be state employees within the meaning of this chapter and shall be compulsory members in compliance with this chapter, the provisions of s. 216.011(1)(dd)2., notwithstanding. Employment performed before July 1, 1994, as such a receivership employee may be claimed as creditable retirement service upon payment by the employee or employer of contributions required in s. 121.081(1), as applicable for the period claimed.

(9) **DUAL EMPLOYMENT.**—A member may not participate in more than one state-administered retirement system, plan, or class of membership simultaneously. Pursuant thereto:

(a) With respect to any member who is not eligible to participate in the Elected Officers' Class, but who is

simultaneously employed in two or more positions covered by different Florida Retirement System classes:

1. The member must participate in the membership class for the position in which he or she is employed the majority of the time: the Regular Class, Senior Management Service Class, Special Risk Class, or Special Risk Administrative Support Class; or

2. If the employment is split equally between or among positions, the member may choose any single class of membership for which he or she is eligible, whether or not the positions are full-time positions. The member's choice must be made in writing and remains in effect as long as the member is employed equally in two or more positions.

(b) Contributions shall be made and creditable service shall be determined as follows:

1. If the member is participating in the Regular Class, retirement contributions shall be made on the total salary the member has received for all covered employment, and at retirement the member's average final compensation shall be calculated on the total salary received from all covered employment.

2. If the member is participating in the Senior Management Service Class, Special Risk Class, or Special Risk Administrative Support Class, retirement contributions shall be made only on the salary received in the designated class of membership. At retirement, the member's average final compensation shall be based only on the salary received in the designated class of membership for any period, including any period of dual employment.

**History.**—s. 5, ch. 70-112; s. 1, ch. 72-182; s. 1, ch. 72-340; s. 1, ch. 72-344; s. 1, ch. 73-268; s. 3, ch. 74-302; s. 1, ch. 75-152; s. 1, ch. 77-174; s. 21, ch. 77-259; s. 2, ch. 77-469; s. 3, ch. 78-308; s. 1, ch. 79-375; s. 1, ch. 79-377; s. 2, ch. 80-242; s. 2, ch. 81-214; s. 60, ch. 81-259; s. 4, ch. 83-76; s. 2, ch. 85-246; s. 7, ch. 88-382; s. 34, ch. 89-207; s. 2, ch. 89-260; s. 16, ch. 89-367; s. 7, ch. 90-274; s. 68, ch. 92-136; s. 5, ch. 94-259; s. 1423, ch. 95-147; s. 1, ch. 95-277; s. 16, ch. 95-392; s. 3, ch. 96-186; s. 5, ch. 96-368; s. 3, ch. 96-423; s. 18, ch. 97-180; s. 11, ch. 98-73; s. 2, ch. 98-138; s. 3, ch. 98-302; s. 53, ch. 99-2; s. 2, ch. 99-9; s. 29, ch. 99-255; s. 6, ch. 99-392; s. 5, ch. 2000-169; s. 3, ch. 2000-347; s. 18, ch. 2001-60; s. 6, ch. 2001-262; s. 898, ch. 2002-387; s. 1, ch. 2003-260; s. 140, ch. 2003-261; s. 9, ch. 2004-5; s. 2, ch. 2007-92; s. 7, ch. 2007-196; s. 19, ch. 2008-4; s. 4, ch. 2008-139; s. 7, ch. 2009-21; s. 3, ch. 2009-209; s. 7, ch. 2011-68; s. 1, ch. 2012-146; s. 62, ch. 2014-22; s. 24, ch. 2020-2.

<sup>1</sup>**Note.**—Abolished by s. 3, ch. 2001-170.

<sup>2</sup>**Note.**—The Social Security Contribution Trust Fund was terminated by s. 1, ch. 2004-234.

**121.0511 Revocation of election and alternative plan.**—The governing body of any municipality or independent special district that has elected to participate in the Florida Retirement System may revoke its election in accordance with the following procedure:

(1) No more than 30 days and at least 7 days before adopting a resolution to revoke the election, in order to establish an alternative retirement plan, a public hearing must be held on the proposed revocation and proposed alternative plan. Notice of this hearing must be given in accordance with the procedures specified in s. 166.041.

(2) At least 7 days, but not more than 15 days, before the hearing, notice of intent to revoke, specifying the time and place of the hearing, must be published as provided in chapter 50. Proof of publication of the notice must be submitted to the Department of Management Services.

(3) The governing body of a municipality or independent special district seeking to revoke its election to

participate in the system must, before such revocation, have an actuarial report prepared and certified by an enrolled actuary, as defined in s. 112.625, illustrating the cost to the municipality or independent special district and to its future employees of providing a new retirement plan for employees hired after January 1, 1996.

(4) A copy of the proposed alternative plan and report must be given to each representative of each certified bargaining unit before adoption of a revocation resolution under subsection (5). A municipality or independent special district that has a collective bargaining agreement with a certified bargaining agent may not exercise the right of revocation for future members of any covered class within the unit without negotiating such revocation and proposed alternative plan, as provided in chapter 447, with each bargaining unit covering such classes of employees. If more than one bargaining unit exists, each unit must negotiate independently. The new retirement plan for special risk employees must provide benefits which meet or exceed the minimum benefits contained in chapter plans under chapter 175 or chapter 185, as appropriate. For purposes of this subsection, "chapter plans" means those plans having minimum benefits required generally under these chapters, and not local law plans having variant benefits permissible under s. 175.351 or s. 185.35.

(5) Upon meeting the requirement set forth in subsections (1)-(4), and subject to the conditions set forth in subsection (6), revocation of election to participate in the system and adoption of the new retirement plan must be accomplished by resolution adopted by the municipality or independent special district. The municipality or independent special district must provide written notice of such revocation to the Division of Retirement by mailing a copy of the resolution to the division, postmarked no later than December 15, 1995. The revocation shall take effect January 1, 1996.

(6) Following the adoption of a revocation resolution under subsection (5), all employees and officers of the municipality or special district who were participants in the Florida Retirement System before January 1, 1996, remain as participants in the system for as long as they are employees or officers of the municipality or independent special district, and all rights, duties, and obligations of the municipality or special district, the system, and the employees and officers remain in effect. An employee or officer who is hired or takes office on or after January 1, 1996, may not participate in the Florida Retirement System, and the revoking municipality or independent special district has no obligation to the system with respect to such employees and officers.

**History.**—s. 3, ch. 95-338; s. 30, ch. 99-255; s. 11, ch. 2021-17.

#### **121.0515 Special Risk Class.—**

(1) **ESTABLISHMENT OF CLASS.**—A separate class of membership within the Florida Retirement System, to be known as the "Special Risk Class," is established to recognize that persons employed in certain categories of law enforcement, firefighting, criminal detention, and emergency medical care

positions are required as one of the essential functions of their positions to perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, and that such persons, because of diminishing physical and mental faculties, may find that they are not able, without risk to the health and safety of themselves, the public, or their coworkers, to continue performing such duties and thus enjoy the full career and retirement benefits enjoyed by persons employed in other membership classes and that, if they find it necessary, due to the physical and mental limitations of their age, to retire at an earlier age and usually with less service, they will suffer an economic deprivation therefrom. To address the peculiar and special problems of this class of employees, a class of retirement membership is established that awards more retirement credit per year of service than that awarded to other employees; however, nothing contained herein shall require ineligibility for Special Risk Class membership upon reaching age 55.

#### **(2) MEMBERSHIP.—**

(a) Until October 1, 1978, "special risk member" means any officer or employee whose application is approved by the administrator and who receives salary payments for work performed as a peace officer; law enforcement officer; police officer; highway patrol officer; custodial employee at a correctional or detention facility; correctional agency employee whose duties and responsibilities involve direct contact with inmates, but excluding secretarial and clerical employees; firefighter; or an employee in any other job in the field of law enforcement or fire protection if the duties of such person are certified as hazardous by his or her employer.

(b) Effective October 1, 1978, through September 30, 1999, "special risk member" means a member of the Florida Retirement System who is designated as a special risk member by the division in accordance with this section. Such member must be employed as a law enforcement officer, a firefighter, or a correctional officer and must meet certain other special criteria as set forth in this section.

(c) Effective October 1, 1999, "special risk member" means a member of the Florida Retirement System who is designated as a special risk member by the division in accordance with this section. Such member must be employed as a law enforcement officer, a firefighter, a correctional officer, an emergency medical technician, or a paramedic and must meet certain other special criteria as set forth in this section.

(d) Effective January 1, 2001, "special risk member" includes:

1. Any member who is employed as a community-based correctional probation officer and meets the special criteria set forth in paragraph (3)(e).

2. Any professional health care bargaining unit or non-unit member who is employed by the Department of Corrections or the Department of Children and Families and meets the special criteria set forth in paragraph (3)(f).

(e) Effective October 1, 2005, through June 30, 2008, the member must be employed by a law enforcement agency or medical examiner's office in a

forensic discipline and meet the special criteria set forth in paragraph (3)(g).

(f) Effective July 1, 2008, the member must be employed by the Department of Law Enforcement in the crime laboratory or by the Division of State Fire Marshal in the forensic laboratory and meet the special criteria set forth in paragraph (3)(h).

(g) Effective July 1, 2008, the member must be employed by a local government law enforcement agency or medical examiner's office and meet the special criteria set forth in paragraph (3)(i).

(h) Effective August 1, 2008, "special risk member" includes any member who meets the special criteria for continued membership set forth in paragraph (3)(j).

(3) CRITERIA.—A member, to be designated as a special risk member, must meet the following criteria:

(a) Effective October 1, 1978, the member must be employed as a law enforcement officer and be certified, or required to be certified, in compliance with s. 943.1395; however, sheriffs and elected police chiefs are excluded from meeting the certification requirements of this paragraph. In addition, the member's duties and responsibilities must include the pursuit, apprehension, and arrest of law violators or suspected law violators; or as of July 1, 1982, the member must be an active member of a bomb disposal unit whose primary responsibility is the location, handling, and disposal of explosive devices; or the member must be the supervisor or command officer of a member or members who have such responsibilities. Administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, are not included;

(b) Effective October 1, 1978, the member must be employed as a firefighter and be certified, or required to be certified, in compliance with s. 633.408 and be employed solely within the fire department of a local government employer or an agency of state government with firefighting responsibilities. In addition, the member's duties and responsibilities must include on-the-scene fighting of fires; as of October 1, 2001, fire prevention or firefighter training; as of October 1, 2001, direct supervision of firefighting units, fire prevention, or firefighter training; or as of July 1, 2001, aerial firefighting surveillance performed by fixed-wing aircraft pilots employed by the Florida Forest Service of the Department of Agriculture and Consumer Services; or the member must be the supervisor or command officer of a member or members who have such responsibilities. Administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, are not included. All periods of creditable service in fire prevention or firefighter training, or as the supervisor or command officer of a member or members who have such responsibilities, and for which the employer paid the special risk contribution rate, are included;

(c) Effective October 1, 1978, the member must be employed as a correctional officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member's primary duties and

responsibilities must be the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported; or as of July 1, 1984, the member must be the supervisor or command officer of a member or members who have such responsibilities. Administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, are not included; however, wardens and assistant wardens, as defined by rule, are included;

(d) Effective October 1, 1999, the member must be employed by a licensed Advance Life Support (ALS) or Basic Life Support (BLS) employer as an emergency medical technician or a paramedic and be certified in compliance with s. 401.27. In addition, the member's primary duties and responsibilities must include on-the-scene emergency medical care or as of October 1, 2001, direct supervision of emergency medical technicians or paramedics, or the member must be the supervisor or command officer of one or more members who have such responsibility. Administrative support personnel, including, but not limited to, those whose primary responsibilities are in accounting, purchasing, legal, and personnel, are not included;

(e) Effective January 1, 2001, the member must be employed as a community-based correctional probation officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member's primary duties and responsibilities must be the supervised custody, surveillance, control, investigation, and counseling of assigned inmates, probationers, parolees, or community controllees within the community; or the member must be the supervisor of a member or members who have such responsibilities. Administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal services, and personnel management, are not included; however, probation and parole circuit and deputy circuit administrators are included;

(f) Effective January 1, 2001, the member must be employed in one of the following classes and must spend at least 75 percent of his or her time performing duties which involve contact with patients or inmates in a correctional or forensic facility or institution:

1. Dietitian (class codes 5203 and 5204);
2. Public health nutrition consultant (class code 5224);
3. Psychological specialist (class codes 5230 and 5231);
4. Psychologist (class code 5234);
5. Senior psychologist (class codes 5237 and 5238);
6. Regional mental health consultant (class code 5240);
7. Psychological Services Director—DCF (class code 5242);
8. Pharmacist (class codes 5245 and 5246);
9. Senior pharmacist (class codes 5248 and 5249);
10. Dentist (class code 5266);
11. Senior dentist (class code 5269);

12. Registered nurse (class codes 5290 and 5291);
  13. Senior registered nurse (class codes 5292 and 5293);
  14. Registered nurse specialist (class codes 5294 and 5295);
  15. Clinical associate (class codes 5298 and 5299);
  16. Advanced practice registered nurse (class codes 5297 and 5300);
  17. Advanced practice registered nurse specialist (class codes 5304 and 5305);
  18. Registered nurse supervisor (class codes 5306 and 5307);
  19. Senior registered nurse supervisor (class codes 5308 and 5309);
  20. Registered nursing consultant (class codes 5312 and 5313);
  21. Quality management program supervisor (class code 5314);
  22. Executive nursing director (class codes 5320 and 5321);
  23. Speech and hearing therapist (class code 5406);
- or

24. Pharmacy manager (class code 5251);

(g) Effective October 1, 2005, through June 30, 2008, the member must be employed by a law enforcement agency or medical examiner's office in a forensic discipline recognized by the International Association for Identification and must qualify for active membership in the International Association for Identification. The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility. Administrative support personnel, including, but not limited to, those whose primary responsibilities are clerical or in accounting, purchasing, legal, and personnel, are not included;

(h) Effective July 1, 2008, the member must be employed by the Department of Law Enforcement in the crime laboratory or by the Division of State Fire Marshal in the forensic laboratory in one of the following classes:

1. Forensic technologist (class code 8459);
2. Crime laboratory technician (class code 8461);
3. Crime laboratory analyst (class code 8463);
4. Senior crime laboratory analyst (class code 8464);
5. Crime laboratory analyst supervisor (class code 8466);
6. Forensic chief (class code 9602); or
7. Forensic services quality manager (class code 9603);

(i) Effective July 1, 2008, the member must be employed by a local government law enforcement agency or medical examiner's office and must spend at least 65 percent of his or her time performing duties that involve the collection, examination, preservation, documentation, preparation, or analysis of human tissues or fluids or physical evidence having potential biological, chemical, or radiological hazard or contamination, or use chemicals, processes, or materials that may have carcinogenic or health-damaging properties

in the analysis of such evidence, or the member must be the direct supervisor of one or more individuals having such responsibility. If a special risk member changes to another position within the same agency, he or she must submit a complete application as provided in paragraph (4)(a); or

(j) The member must have already qualified for and be actively participating in special risk membership under paragraph (a), paragraph (b), or paragraph (c), must have suffered a qualifying injury as defined in this paragraph, must not be receiving disability retirement benefits as provided in s. 121.091(4), and must satisfy the requirements of this paragraph.

1. The ability to qualify for the class of membership defined in paragraph (2)(h) occurs when two licensed medical physicians, one of whom is a primary treating physician of the member, certify the existence of the physical injury and medical condition that constitute a qualifying injury as defined in this paragraph and that the member has reached maximum medical improvement after August 1, 2008. The certifications from the licensed medical physicians must include, at a minimum, that the injury to the special risk member has resulted in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg; and:

a. That this physical loss or loss of use is total and permanent, except if the loss of use is due to a physical injury to the member's brain, in which event the loss of use is permanent with at least 75 percent loss of motor function with respect to each arm or leg affected.

b. That this physical loss or loss of use renders the member physically unable to perform the essential job functions of his or her special risk position.

c. That, notwithstanding this physical loss or loss of use, the individual can perform the essential job functions required by the member's new position, as provided in subparagraph 3.

d. That use of artificial limbs is not possible or does not alter the member's ability to perform the essential job functions of the member's position.

e. That the physical loss or loss of use is a direct result of a physical injury and not a result of any mental, psychological, or emotional injury.

2. For the purposes of this paragraph, "qualifying injury" means an injury sustained in the line of duty, as certified by the member's employing agency, by a special risk member that does not result in total and permanent disability as defined in s. 121.091(4)(b). An injury is a qualifying injury if the injury is a physical injury to the member's physical body resulting in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg. Notwithstanding any other provision of this section, an injury that would otherwise qualify as a qualifying injury is not considered a qualifying injury if and when the member ceases employment with the employer for whom he or she was providing special risk services on the date the injury occurred.

3. The new position, as described in sub-subparagraph 1.c., that is required for qualification as a special risk member under this paragraph is not required to be a position with essential job functions that entitle an

individual to special risk membership. Whether a new position as described in sub-subparagraph 1.c. exists and is available to the special risk member is a decision to be made solely by the employer in accordance with its hiring practices and applicable law.

4. This paragraph does not grant or create additional rights for any individual to continued employment or to be hired or rehired by his or her employer that are not already provided within the Florida Statutes, the State Constitution, the Americans with Disabilities Act, if applicable, or any other applicable state or federal law.

(4) **PROCEDURE FOR DESIGNATING.—**

(a) Any member of the Florida Retirement System employed by a county, municipality, or special district who feels that his or her position meets the criteria set forth in this section for membership in the Special Risk Class may request that his or her employer submit an application to the department requesting that the department designate him or her as a Special Risk member. If the employer agrees that the member meets the requirements for Special Risk Class membership, the employer shall submit an application to the department on behalf of the employee containing a certification that the member meets the criteria for Special Risk Class membership set forth in this section and such other supporting documentation as may be required by administrative rule. The department shall, within 90 days, designate or refuse to designate the member as a special risk member. If the employer declines to submit the member's application to the department or if the department does not designate the member as a special risk member, the member or the employer may appeal to the State Retirement Commission, as provided in s. 121.23, for designation as a special risk member. A member who receives a final affirmative ruling pursuant to such appeal shall have Special Risk Class membership retroactive to the date such member would have had Special Risk Class membership had such membership been approved by the employer and the department, as determined by the department, and the employer contributions shall be paid in full within 1 year after such final ruling.

(b) Applying the criteria set forth in this section, the department shall specify which current and newly created classes of positions under the uniform classification plan established pursuant to chapter 110 entitle the incumbents of positions in those classes to membership in the Special Risk Class. Only employees employed in the classes so specified shall be special risk members. If a class is not specified by the department, the employing agency may petition the State Retirement Commission for approval in accordance with s. 121.23.

(5) **REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—**

(a) Any member who is a special risk member on October 1, 1978, and who fails to meet the criteria for Special Risk Class membership established by this section shall have his or her special risk designation removed and thereafter shall be a regular member and earn only regular membership credit. The department may review the special risk designation of members to

determine whether or not those members continue to meet the criteria for Special Risk Class membership.

(b) Any member who is a special risk member on July 1, 2008, and who became eligible to participate under paragraph (3)(g) but fails to meet the criteria for Special Risk Class membership established by paragraph (3)(h) or paragraph (3)(i) shall have his or her special risk designation removed and thereafter shall be a Regular Class member and earn only Regular Class membership credit. The department may review the special risk designation of members to determine whether or not those members continue to meet the criteria for Special Risk Class membership.

(6) **CREDIT FOR PAST SERVICE.—**A special risk member may purchase retirement credit in the Special Risk Class based upon past service, and may upgrade retirement credit for such past service, to the extent of 2 percent of the member's average monthly compensation as specified in s. 121.091(1)(a) for such service as follows:

(a) The member may purchase special risk credit for past service with a municipality or special district which has elected to join the Florida Retirement System, or with a participating agency to which a member's governmental unit was transferred, merged, or consolidated as provided in s. 121.081(1)(f), if the member was employed with the municipality or special district when it commenced participating in the Florida Retirement System or with the governmental unit at the time of its transfer, merger, or consolidation with the participating agency. The service must satisfy the criteria set forth in subsection (3) for Special Risk Class membership as a law enforcement officer, firefighter, or correctional officer; however, a certificate or waiver of certificate of compliance with s. 943.1395 or s. 633.408 is not required for such service.

(b) Contributions for upgrading the additional special risk credit must be equal to the difference in the employer and, if applicable, employee contributions paid and the special risk percentage rate of gross salary in effect at the time of purchase for the period being claimed, plus interest thereon at the rate of 4 percent a year compounded annually from the date of such service until July 1, 1975, and 6.5 percent a year thereafter until the date of payment. This past service may be purchased by the member or by the employer on behalf of the member.

(7) **CREDIT FOR PRIOR SERVICE.—**A special risk member who has creditable service with an employer under chapter 122 or chapter 321, or was employed as a correctional counselor with the Department of Corrections between December 1, 1970, and September 30, 1979, in a position that satisfies the criteria provided in subsection (3) for Special Risk Class membership except the requirement for a certificate or waiver of certificate, shall have those years of service counted towards the attainment of the normal retirement date as a special risk member under this chapter. The percentage value of each such year of creditable service under chapter 122, chapter 321, or as a correctional counselor may not change as a result of the application of this subsection. A special risk member who has taken a refund of contributions for such creditable service under

chapter 122 or chapter 321 and has reclaimed it as prior service credit under this chapter shall be permitted to have such creditable service counted towards the attainment of the normal retirement date for the Special Risk Class of membership under this chapter.

**(8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS.—**

(a) A special risk member who is moved or reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position within any law enforcement, firefighting, correctional, or emergency medical care agency under the Florida Retirement System, shall participate in the Special Risk Administrative Support Class and earn credit for such service at the same percentage rate as that earned by a regular member. Notwithstanding subsection (5), service in an administrative support position, for purposes of s. 121.091, applies toward satisfaction of the special risk normal retirement date, as defined in s. 121.021, if, while in such position, the member remains certified as a law enforcement officer, firefighter, correctional officer, emergency medical technician, or paramedic; remains subject to reassignment at any time to a position qualifying for special risk membership; and completes an aggregate of the years of service as a designated special risk member before retirement which is equal to or greater than the years of service required to be vested.

(b) Upon application by a member, the provisions of this subsection apply, with respect to such member, retroactively to October 1, 1978, if the member was removed from the Special Risk Class effective October 1, 1978, due to a change in special risk criteria as a result of the enactment of chapter 78-308, Laws of Florida, or was reassigned or employed for training or career development or to fill a critical agency need.

(c) The department shall adopt rules as required to administer this subsection.

(d) Notwithstanding any other provision of this subsection, this subsection does not apply to any special risk member who qualifies for continued membership pursuant to paragraph (3)(j).

**(9) RESTORATION OF SPECIAL RISK CREDIT FOR SPECIFIED PERIOD OF EMPLOYMENT.—**A special risk member who was removed from the Special Risk Class effective October 1978, for the sole reason that he or she did not possess the required certificate or temporary waiver of certificate, and who obtained certification and was approved for Special Risk Class membership on or before June 30, 1982, may have special risk credit restored for that period upon:

(a) Certification by his or her employer that all requirements for Special Risk Class membership except the requirement for certification or temporary waiver of certification were met; and

(b) Payment of contributions equal to the difference in the contributions that were paid during the period and the contributions required for special risk members during that period, plus 6.5 percent interest thereon, compounded each June 30 from date of service until date of payment.

This credit may be purchased by the member or by the employer on behalf of the member.

**<sup>2</sup>(10) CREDIT FOR UPGRADED SERVICE.—**

(a) Any member of the Special Risk Class who has earned creditable service through September 30, 1999, in another membership class of the Florida Retirement System as an emergency medical technician or paramedic, which service is within the purview of the Special Risk Class, may purchase additional retirement credit to upgrade such service to Special Risk Class service, to the extent of the percentages of the member's average final compensation provided in s. 121.091(1)(a)2. Contributions for upgrading such service to Special Risk Class credit must be equal to the difference in the contributions paid and the Special Risk Class contribution rate as a percentage of gross salary in effect for the period being claimed, plus interest thereon at the rate of 6.5 percent a year, compounded annually until the date of payment. This service credit may be purchased by the employer on behalf of the member.

(b) Any member of the Special Risk Class who has earned creditable service through September 30, 2001, in another membership class of the Florida Retirement System whose responsibilities included fire prevention or firefighter training, which service is within the purview of the Special Risk Class, may purchase additional retirement credit to upgrade such service to Special Risk Class service, to the extent of the percentages of the member's average final compensation provided in s. 121.091(1)(a)2. Contributions for upgrading such service to Special Risk Class credit must be equal to the difference in the contributions paid and the Special Risk Class contribution rate as a percentage of gross salary in effect for the period being claimed, plus interest thereon at the rate of 6.5 percent a year, compounded annually until the date of payment. This service credit may be purchased by the employer on behalf of the member.

(c) Any member of the Special Risk Class who has earned creditable service through June 30, 2008, in another membership class of the Florida Retirement System in a position with the Department of Law Enforcement or the Division of State Fire Marshal and became covered by the Special Risk Class as described in paragraph (3)(h), or with a local government law enforcement agency or medical examiner's office and became covered by the Special Risk Class as described in paragraph (3)(i), which service is within the purview of the Special Risk Class, and is employed in such position on or after July 1, 2008, may purchase additional retirement credit to upgrade such service to Special Risk Class service, to the extent of the percentages of the member's average final compensation provided in s. 121.091(1)(a)2. The cost for such credit must be an amount representing the actuarial accrued liability for the difference in accrual value during the affected period of service. The cost shall be calculated using the discount rate and other relevant actuarial assumptions that were used to value the Florida Retirement System Pension Plan liabilities in the most recent actuarial valuation. The division shall ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. The cost must be paid

immediately upon notification by the division. The local government employer may purchase the upgraded service credit on behalf of the member if the member has been employed by that employer for at least 3 years.

**History.**—s. 2, ch. 78-308; s. 1, ch. 81-153; s. 1, ch. 81-214; s. 1, ch. 82-169; s. 6, ch. 83-167; s. 35, ch. 83-217; s. 1, ch. 83-283; s. 26, ch. 84-258; s. 5, ch. 84-266; s. 8, ch. 88-382; s. 55, ch. 92-279; s. 55, ch. 92-326; s. 770, ch. 95-147; s. 3, ch. 98-138; s. 31, ch. 99-255; s. 23, ch. 99-392; s. 4, ch. 2000-161; ss. 6, 29, ch. 2000-169; s. 4, ch. 2000-347; s. 43, ch. 2001-125; ss. 3, 6, ch. 2001-235; s. 1, ch. 2001-279; s. 16, ch. 2002-273; s. 1, ch. 2005-167; s. 1, ch. 2008-77; s. 4, ch. 2010-179; s. 8, ch. 2011-68; s. 12, ch. 2012-5; s. 1, ch. 2012-7; s. 3, ch. 2012-222; s. 121, ch. 2013-183; s. 33, ch. 2014-19; s. 47, ch. 2014-162; s. 9, ch. 2018-106.

**Note.**—Section 11, ch. 2001-235, as amended by s. 8, ch. 2002-177, provides that “[i]t is the intent of the Legislature that the costs attributable to the additional cost-of-living increase for special risk retirees and Deferred Retirement Option Program participants as provided under section 2 shall be funded by recognition of excess actuarial assets, amortized over 30 years with the payments assumed to remain relatively stable when expressed as a percentage of payroll. For fiscal year 2001-2002, the payment shall be \$9.3 million. For fiscal year 2002-2003, the payment shall be \$15.1 million, and, thereafter, payments shall increase by 5 percent per year. If insufficient funds are available to fund this additional cost through recognition of excess actuarial assets in fiscal year 2002-2003 and any year thereafter, and there remains an unfunded actuarial liability attributable to the one-time cost-of-living increase provided under section 2, the payroll contribution rate for the Special Risk Class of the Florida Retirement System shall be increased by .93 percent effective July 1 of that year, unless the Legislature provides an alternative funding mechanism before that date.” Section 2, ch. 2001-235, amended s. 121.091(13)(b), relating to the Deferred Retirement Option Program to add a provision relating to elected officers. The intended reference may be to s. 10, ch. 2001-235, which provides a one-time special cost-of-living increase for members of the Special Risk Class.

**Note.**—Section 17, ch. 2002-273, provides that “[i]t is the intent of the Legislature that any additional cost attributable to the upgrade in the retirement benefits for special risk members who have provided fire prevention or firefighter training above the contributions paid at the time of service shall be funded by recognition of the necessary amount from the excess actuarial assets of the Florida Retirement System Trust Fund.”

#### **121.052 Membership class of elected officers.**

(1) **ESTABLISHMENT OF CLASS.**—There is hereby established a separate class of members within the Florida Retirement System, which hereafter may be cited as the “Elected Officers’ Class.” Unless the context otherwise requires, any reference to said class shall also be construed as a reference to the Elected State Officers’ Class, as the same existed prior to July 3, 1990.

(2) **MEMBERSHIP.**—The following holders of elective office, hereinafter referred to as “elected officers,” whether assuming elective office by election, reelection, or appointment, are members of the Elected Officers’ Class, except as provided in subsection (3):

(a) Any Governor, Lieutenant Governor, Cabinet officer, legislator, Supreme Court justice, district court of appeal judge, circuit judge, or state attorney assuming office on or after July 1, 1972.

(b) Any county court judge assuming office on or after October 1, 1974.

(c) Any public defender assuming office on or after July 1, 1977.

(d) Any constitutional county elected officer assuming office on or after July 1, 1981, including any sheriff, tax collector, property appraiser, supervisor of elections, clerk of the circuit court, county commissioner, school board member, or elected school board superintendent, or any elected officer of any entity with countywide jurisdiction assuming office on or after July 1, 1981, who, pursuant to general or special law, exercises powers and duties that, but for such general or special law, would be exercised by any of the constitutional county elected officers set forth in this paragraph, including the sheriff and clerk of the circuit court in a consolidated government with countywide jurisdiction

unless such sheriff or clerk elected to continue to participate in a local retirement system.

(e) Any public service commissioner assuming office on or after July 1, 1972, but prior to July 1, 1979.

(f) Any elected officer of a municipality or special district assuming office on July 1, 1997, through June 30, 2009, as provided in paragraph (3)(e). On or after January 1, 2010, an elected officer shall become a member only if the governing body of the municipality or special district, at the time it joins the Florida Retirement System for its elected officers, elects, by majority vote, to include all its elected positions in the Elected Officers’ Class.

(3) **PARTICIPATION AND WITHDRAWAL, GENERALLY.**—Effective July 1, 1990, participation in the Elected Officers’ Class shall be compulsory for elected officers listed in paragraphs (2)(a)-(d) and (f) assuming office on or after said date, unless the elected officer elects membership in another class or withdraws from the Florida Retirement System as provided in paragraphs (3)(a)-(d):

(a) Any elected officer who is or becomes dually employed and a member of the Florida Retirement System or one of the existing systems may elect membership in any system or class for which he or she is eligible. Upon becoming dually employed, the elected officer shall have a period of 6 months to notify the administrator of his or her decision, as provided in subsection (6).

(b) Upon assuming office, any sheriff shall have a period of 6 months to notify the administrator of his or her decision to remain or elect membership in the Special Risk Class in lieu of membership in the Elected Officers’ Class.

(c) Any elected officer may, within 6 months after assuming office, or within 6 months after this act becomes a law for serving elected officers, elect membership in the Senior Management Service Class as provided in s. 121.055 in lieu of membership in the Elected Officers’ Class. Any such election made by a county elected officer shall have no effect upon the statutory limit on the number of nonelective full-time positions that may be designated by a local agency employer for inclusion in the Senior Management Service Class under s. 121.055(1)(b)1.

(d)1. Any elected officer may elect to withdraw from participating in the Florida Retirement System in any manner whatsoever. Upon assuming office, the member shall have a period of 6 months to notify the administrator of his or her decision to withdraw from the Florida Retirement System altogether. Such election shall be made in writing and a copy shall be filed with the employer.

2. Upon receipt of a request from an elected officer to withdraw from the Florida Retirement System pursuant to subparagraph 1., the administrator shall refund all moneys contributed by the elected officer to the system during the period of participation in the system, unless the elected officer has a vested right under the Florida Retirement System, in which case he or she shall not receive a refund of contributions.

3. Any elected officer who has withdrawn from the Florida Retirement System pursuant to this paragraph



shall be permitted to rejoin the Elected Officers' Class upon written request to the administrator.

a. Credit for prior service based on the period for which refunds were received pursuant to subparagraph 2. shall be received by an elected officer who rejoins the system upon payment to the System Trust Fund of an amount equal to the contributions refunded to the elected officer pursuant to subparagraph 2., plus 4 percent interest compounded annually from the date of refund until July 1, 1975, and 6.5 percent interest, compounded annually thereafter until the date of payment.

b. Credit for prior service based on the period during which the elected officer had withdrawn from the system, and for which no contributions were made, shall be received by the elected officer upon payment to the System Trust Fund of an amount equal to the contributions required, under the contribution rate in effect during the period of withdrawal for which credit is being purchased, plus 6.5 percent interest, compounded annually until the date of payment. The payment of the total of such amount shall be made by the employer and the elected officer in the relative proportions provided by law for contributions during the period of withdrawal.

Failure to timely withdraw from the Elected Officers' Class shall constitute an election to maintain membership in the Elected Officers' Class.

(e) The governing body of a municipality or special district may, by majority vote, elect to designate all its elected positions for inclusion in the Elected Officers' Class as follows.

1. Effective July 1, 1997, such election must be made between July 1, 1997, and December 31, 1997, and is irrevocable. The designation of such positions is effective the first day of the month following receipt by the department of the ordinance or resolution passed by the governing body.

2. Effective July 1, 2001, such election must be made between July 1, 2001, and December 31, 2001, and is irrevocable. The designation of such positions is effective the first day of the month following receipt by the department of the ordinance or resolution passed by the governing body.

3. Effective July 1, 2009, such election must be made between July 1, 2009, and December 31, 2009, and is irrevocable. The designation of such positions is effective the first day of the month following receipt by the department of the ordinance or resolution passed by the governing body.

(4) PARTICIPATION BY ELECTED OFFICERS SERVING A SHORTENED TERM DUE TO APPORTIONMENT, FEDERAL INTERVENTION, ETC.—

(a) A duly elected officer whose term of office was shortened by legislative or judicial apportionment pursuant to s. 16, Art. III of the State Constitution may, after the term of office to which he or she was elected is completed, pay into the Florida Retirement System Trust Fund the amount of contributions that would have been made by the officer or the officer's employer on his or her behalf, plus 4 percent interest compounded annually from the date he or she left office until July

1, 1975, and 6.5 percent interest compounded annually thereafter, and may receive service credit for the length of time the officer would have served if such term had not been shortened by apportionment.

(b) Any duly elected officer whose term of office was shortened because the election at which he or she was elected was delayed as a result of federal intervention under the federal Voting Rights Act may, after the term of office to which he or she was elected is completed, pay into the System Trust Fund the amount of contributions that would have been made by the employee or by the employer on his or her behalf for the period of time the assumption of office was delayed, plus 4 percent interest compounded annually from the date he or she assumed office until July 1, 1975, and 6.5 percent interest compounded annually thereafter, and may receive service credit for the length of time he or she would have served if such term had not been shortened by delay of the election.

(c) For the purpose of this chapter, "creditable service" includes the period from November 1972 to January 1973 which would have been served by an elected county officer but for the enactment of chapter 67-510, Laws of Florida, if the inclusion of such period would provide any person affected with sufficient creditable service to qualify for retirement benefits pursuant to this chapter.

(d)1. Any justice or judge, or any retired justice or judge who retired before July 1, 1993, who attained the age of 70 years before July 1, 2019, and who was prevented under s. 8, Art. V of the State Constitution from completing his or her term of office because of age may elect to purchase credit for all or a portion of the months he or she would have served during the remainder of the term of office; however, he or she may claim those months only after the date the service would have occurred. The justice or judge must pay into the Florida Retirement System Trust Fund the amount of contributions that would have been made by the employer on his or her behalf for the period of time being claimed, plus 6.5 percent interest thereon compounded each June 30 from the date he or she left office, in order to receive service credit in this class for the period of time being claimed. After the date the service would have occurred, and upon payment of the required contributions, the retirement benefit of a retired justice or judge shall be adjusted prospectively to include the additional creditable service; however, such adjustment may be made only once.

2. Any justice or judge who did not seek retention or election to a subsequent term of office because he or she was prevented under s. 8, Art. V of the State Constitution from completing such term of office upon attaining the age of 70 years may elect to purchase service credit for service as a temporary judge as assigned by the court if the temporary assignment immediately follows the last full term of office served and the purchase is limited to the number of months of service needed to vest retirement benefits. To receive retirement credit for such temporary service beyond termination, the justice or judge must pay into the Florida Retirement System Trust Fund the amount of contributions that would have been made by the justice

or judge and the employer on his or her behalf had he or she continued in office for the period of time being claimed, plus 6.5 percent interest thereon compounded each June 30 from the date he or she left office.

**(5) UPGRADED SERVICE; PURCHASE OF ADDITIONAL CREDIT.—**

(a) As provided in paragraph (b), and subject to the provisions of subsection (6), if applicable, a current or former member of the Elected Officers' Class, or former elected officer who held office after his subclass of the Elected Officers' Class was established, and who opted for membership in a membership class of the Florida Retirement System other than the Elected Officers' Class, may purchase at his or her own expense additional retirement credit in the Elected Officers' Class for all creditable service as an officer within the purview of this class, and such other creditable service as authorized hereunder for which he or she has accumulated credit in the retirement system or class within the Florida Retirement System from which he or she transfers. Any member of the Elected Officers' Class may purchase additional retirement credit for service prior to January 1, 1973, as a county solicitor, elected county prosecuting attorney, county judge, judge of a court of record, judge of a criminal or civil court of record, judge of any metropolitan court established pursuant to s. 6, Art. VIII of the State Constitution, judge of a small claims court, or justice of the peace, or for service as a county court judge from January 1, 1973, to October 1, 1974.

(b) To receive additional retirement credit for service within the purview of the Elected Officers' Class as provided in paragraph (a), such member shall pay a sum equal to the difference between the amounts derived under subparagraphs 1. and 2.:

1. The total employee and employer contributions actually paid, based on the actual gross salary received and the contribution rates in effect for the period of his or her tenure in office; and

2. The total contributions which would have been required at the time the service was rendered for the subclass of elected state officers' service being purchased, based on the actual gross salary received or on a gross salary of \$1,000 per month, whichever is greater, multiplied by the contribution rates required, as follows:

a. The contribution rates in effect at the time the service was rendered for the subclass of elected state officers' service being purchased; or

b. The contribution rates in effect on July 1, 1972, for such service rendered before July 1, 1972, by an elected officer who held an elective office included within the Elected State Officers' Class upon its creation; or

c. The contribution rates in effect for the appropriate subclass on the date of inclusion of the elective office within the Elected Officers' Class, as set forth in subsection (2); or

d. For service as an elected county officer before July 1, 1981, the contribution rate applicable for the legislative subclass of the Elected State Officers' Class,

plus interest thereon at the rate of 4 percent per year compounded annually each June 30 from the date of such service until July 1, 1975, and at the rate of 6.5 percent per year thereafter until the date of payment.

(c) Notwithstanding any provision of this subsection to the contrary, a current or former member of the Elected Officers' Class, or a former elected officer as described in paragraph (a), may elect to claim additional retirement credit in the Elected Officers' Class pursuant to paragraph (a) upon payment of the required contributions and interest due the Florida Retirement System Trust Fund. The current or former employer of such officer may elect to pay any portion of the total required employee and employer contributions and interest due on behalf of such member, provided such payment is made before January 1, 1998.

(d) Any member of the Florida Retirement System who serves as the elected mayor of a consolidated local government, which government by its charter has chosen status as a municipality rather than a county government for purposes of the state retirement system administered under this chapter, may elect membership in the Elected Officers' Class established by this section for the duration of the term of office. Any such mayor or former mayor shall be eligible for membership in this class for the term of office, provided the member or the local government employer pays the retirement contributions that would have been paid had actual participation commenced at that time, plus interest at 6.5 percent compounded each June 30 from date of participation until date of payment. No retirement credit will be allowed under this subsection for any such service which is used to obtain a benefit under any local retirement system.

**(6) DUAL EMPLOYMENT.—**A member may not participate in more than one state-administered retirement system, plan, or class of membership simultaneously. If an elected officer becomes dually employed, or if a member becomes dually employed as an elected officer, such officer shall have 6 months to elect membership from among the plans or classes for which he or she is eligible, as set forth in this subsection. Failure to make election during the prescribed period shall result in compulsory membership in the Elected Officers' Class.

(a) If an elected officer is or becomes dually employed, he or she may elect membership in the Elected Officers' Class and retirement contributions shall be made only on the salary earned as a state or county elected officer. At retirement, the officer's average final compensation shall be based only on the salary received as an officer of that class for any period including dual employment.

(b) If an elected officer is or becomes dually employed in a position in the Regular Class, such officer may elect membership in the Regular Class and contributions shall be paid on the total salary received for all employment, at the contribution rate required for the Regular Class. At retirement, the officer's average final compensation shall be based on all salary reported for both classes for any period including dual employment.

(c) If an elected officer is or becomes dually employed in a position in a class other than the Regular Class, he or she may elect to be a member of the other class for which he or she is eligible and retirement contributions shall be based only on the salary earned in the position other than the elected position. At retirement, the officer's average final compensation shall be based only on the salary received as an employee in that position for any period including dual employment.

(d) A member of the State University System Optional Retirement Program, the State Community College System Optional Retirement Program, or the Senior Management Service Optional Annuity Program who becomes dually employed in an elected office eligible for the Elected Officers' Class shall, within 6 months after assuming office, select membership in one of the following classes or plans. Failure to timely notify the administrator of such selection shall result in compulsory membership in the Elected Officers' Class for the entire period of dual employment as an elected officer.

1. The Elected Officers' Class.—If the participant elects membership in the Elected Officers' Class, participation in the optional retirement program or the optional annuity program shall cease for the period of dual employment, and retirement contributions shall be paid as required only on the salary earned as a state or county elected officer. At retirement, the member's average final compensation under the Florida Retirement System shall be based only on the salary received as an employee in that position for such period including dual employment. When the member ceases to be a dually employed elected officer, he or she may, within 90 days, elect membership in the Florida Retirement System class for which he or she is eligible, except as provided in s. 121.051(1)(a) for members of a faculty practice plan, or may again become a participant in the optional retirement program or the optional annuity program for which he or she is eligible.

2. The State University System Optional Retirement Program, the State Community College System Optional Retirement Program, or the Senior Management System Optional Annuity Program.—If the participant elects to remain a member of the optional program, retirement contributions shall be paid as required only on the salary earned in the position eligible for the optional program selected. At retirement, his or her annuity shall include the contributions required only on the salary received for employment in the position eligible for the selected optional program for such period including dual employment.

3. The Regular Class.—If the participant elects membership in the Regular Class, participation in the optional retirement program or the optional annuity program shall cease for the period of dual employment and retirement contributions shall be paid as required on the total salary received for all employment. At retirement, his or her average final compensation under the Florida Retirement System shall be based on all salary reported for both positions during such period of dual employment. Membership in the optional program shall cease for as long as the officer remains an elected officer. When such member ceases to be a dually

employed elected officer, he or she may, within 90 days, elect membership in the Florida Retirement System class for which he or she is eligible, except as provided in s. 121.051(1)(a) for members of a faculty practice plan, or again become a participant in the optional retirement program or the optional annuity program for which he or she is eligible.

(e) Where a former elected officer purchasing additional retirement credit under former subparagraph (5)(b)2. was dually employed, employee and employer contributions paid for service in the position not covered by the Elected Officers' Class shall be refunded to the employee and employer, as applicable, and no salaries earned in a class other than the Elected Officers' Class shall apply toward the officer's average final compensation.

#### (7) CONTRIBUTIONS.—

(a) The following table states the required retirement contribution rates for members of the Elected Officers' Class and their employers in terms of a percentage of the member's gross compensation. A change in a contribution rate is effective with the first salary paid on or after the beginning date of the change. Contributions shall be made or deducted as may be appropriate for each pay period and are in addition to the contributions required for social security and the Retiree Health Insurance Subsidy Trust Fund.

##### 1.

Dates of Contribution Rate Changes	Members	Employers
July 1, 2001, through June 30, 2002		
Legislators	0%	15.14%
Governor, Lt. Governor, Cabinet Officers	0%	15.14%
State Attorneys, Public Defenders	0%	15.14%
Justices, Judges	0%	20.61%
County Elected Officers	0%	17.61%

2. Effective July 1, 2002, the required retirement contribution rates shall be specified in s. 121.71.

(b) The employer paying the salary of a member of the Elected Officers' Class shall contribute an amount as specified in this subsection or s. 121.71, as appropriate, which shall constitute the employer retirement contribution with respect to such member. The employer shall also withhold one-half of the entire contribution of the member required for social security coverage. Effective July 1, 2011, each member of the Elected Officers' Class shall pay employee contributions as specified in s. 121.71.

(c) If a member of the Elected Officers' Class ceases to fill an office covered by this class for 3 calendar months for any reason other than retirement and has not been employed in any capacity with any participating employer for 3 calendar months, the member may receive a refund of all contributions he or she has made to the pension plan, subject to the restrictions otherwise provided in this chapter. Partial refunds are not permitted. The refund shall not include any interest earnings on the contributions for a member of the pension plan. Employer contributions made on

behalf of the member are not refundable. A member may not receive a refund of employee contributions if a pending or an approved qualified domestic relations order is filed against the member's retirement account. By obtaining a refund of contributions, a member waives all rights under the Florida Retirement System and the health insurance subsidy provided under s. 112.363 to the service credit represented by the refunded contributions, except the right to purchase his or her prior service credit in accordance with s. 121.081(2).

(d) The following table states the required employer contribution on behalf of each member of the Elected Officers' Class in terms of a percentage of the member's gross compensation. Such contribution constitutes the entire health insurance subsidy contribution with respect to each such member. A change in the contribution rate is effective with the first salary paid on or after the beginning date of the change. The retiree health insurance subsidy contribution rate is as follows:

Dates of Contribution Rate Changes	Contribution Rate
October 1, 1987, through December 31, 1988	0.24%
January 1, 1989, through December 31, 1993	0.48%
January 1, 1994, through December 31, 1994	0.56%
January 1, 1995, through June 30, 1998	0.66%
July 1, 1998, through June 30, 2001	0.94%
July 1, 2001, through June 30, 2013	1.11%
July 1, 2013, through June 30, 2014	1.20%
July 1, 2014, through June 30, 2015	1.26%
Effective July 1, 2015	1.66%

Such contributions and accompanying payroll data are due and payable no later than the 5th working day of the month immediately following the month during which the payroll period ended and shall be deposited by the administrator in the Retiree Health Insurance Subsidy Trust Fund.

(8) **NORMAL RETIREMENT DATE; VESTING REQUIREMENT.**—A member of the Elected Officers' Class shall have the same normal retirement date and vesting requirement, as those terms are defined in s. 121.021(29) and (45), for a member of the regular class of the Florida Retirement System. Any public service commissioner who was removed from the Elected State Officers' Class on July 1, 1979, after attaining at least 8 years of creditable service in that class is considered to have reached the normal retirement date upon attaining age 62 as required in s. 121.021(29)(a).

(9) **AVERAGE FINAL COMPENSATION.**—The average final compensation of a member of the Elected Officers' Class shall be as defined in s. 121.021(24). If a member has received credit for upgraded previous Elected Officers' Class service as provided in subsection (5), and the upgraded service salary is greater than his or her actual salary, the upgraded service salary shall be used to calculate the member's average final compensation.

(10) **ACCRUED SERVICE VALUE.**—A member of the Elected Officers' Class who is a Supreme Court justice, district court of appeal judge, circuit judge, or

county court judge shall receive judicial retirement credit of  $3\frac{1}{3}$  percent of average final compensation, and all other members shall receive elected officer accrual value of 3 percent of average final compensation, for each year of creditable service in such class.

(11) **RETENTION OF CREDIT.**—

(a) Any member of the Elected Officers' Class who ceases to fill an office covered by this class and who is employed in a position covered by another class of the Florida Retirement System shall retain judicial or elected officer retirement credit in the Florida Retirement System, as applicable, for each year of creditable service in such class.

(b) Any public service commissioner who was removed from the Elected State Officers' Class on July 1, 1979, shall retain any retirement credit earned in the Elected State Officers' Class as of that date.

(c) Any member of the Elected Officers' Class who leaves office or otherwise terminates membership in the retirement system for any reason other than death or retirement and who does not come under the provisions of paragraph (a) or paragraph (b) shall be subject to the termination benefit provisions of s. 121.091(5).

(12) **BENEFITS.**—

(a) Upon attaining his or her normal retirement date, a member of the Elected Officers' Class shall, upon application to the administrator, receive a monthly benefit which shall commence on the last day of the month of retirement and be payable on the last day of each month thereafter during his or her lifetime. The amount of such monthly benefit shall be the total percentage of accrued value received by the member multiplied by his or her average monthly compensation. The total percentage of accrued value received by a member shall be the sum of the retirement credit earned or purchased as a member of the Elected Officers' Class, and any other retirement credit earned or purchased as a member of an existing system or another class of the Florida Retirement System, together with any additional retirement credit he or she has acquired for upgraded service within the purview of the class, wartime military service, or past or prior service. However, in no event shall the annual benefit exceed the member's average final compensation.

(b) The benefit provisions of s. 121.091(2)-(6), (8), (9), and (11), relating to benefits payable for dual normal retirement ages, early retirement, disability retirement, termination benefits, optional forms of retirement, designation of beneficiaries, employment after retirement, and method of computing actuarial equivalent, respectively, shall also apply to members of the Elected Officers' Class. These provisions shall be construed in such manner as to make them compatible with the provisions of this section.

(c) The benefit provisions of s. 121.091(7), relating to death benefits, shall apply to members of the Elected Officers' Class and shall be construed in such manner as to make them compatible with the provisions of this section, except that:

1. If any elected official dies in office who would have been vested under the Elected Officers' Class, any other class of the Florida Retirement System, or any

other state-administered retirement system, if the official had lived to complete his or her term of office, the official's spouse may elect to leave the official's retirement contributions in the retirement trust fund and pay into said fund any required contributions which would have been paid by the officer or the employer had the officer lived to complete the term of office.

2. If a deceased member's surviving spouse as described in subparagraph 1. previously received a refund of the member's contributions made to the retirement trust fund, the surviving spouse may pay into the retirement trust fund an amount equal to the deceased member's contributions previously refunded, together with interest at 4 percent compounded annually on the amount of such refunded contributions from the date of refund until July 1, 1975, and at 6.5 percent compounded annually thereafter to the date of payment, plus such additional contributions as may be required under subparagraph 1., in order to become vested, as applicable.

Upon conclusion of the term of office to which the deceased officer was elected, a spouse who pays into the retirement trust fund such additional or refunded contributions, plus interest, shall be eligible to receive a monthly benefit in the same manner as the surviving spouse of a member who dies after accumulating the required number of years of creditable service as described herein.

(d) The provisions of ss. 121.101 and 121.111, relating to the cost-of-living adjustment of retirement benefits and retirement credit for wartime military service, respectively, shall apply to members of the Elected Officers' Class. Creditable service for actual wartime service, as authorized by s. 121.111(2), not exceeding 4 years, shall be acquired and paid for as provided in said subsection. Upon payment by the member of 4 percent of gross salary plus accrued interest, retirement credit shall be granted at the rate of 1.6 percent for each year of creditable service acquired under said subsection.

(13) **SOCIAL SECURITY COVERAGE.**—Members of the Elected Officers' Class shall be subject to social security coverage as provided by the federal Social Security Act. The administrator shall make such modification to the agreement between the state and the Federal Social Security Administrator, made pursuant to the provisions of chapter 650, hold any referendum, or take any other action as may be required to provide social security coverage for such members.

(14) **RULES.**—The administrator shall make such rules as are necessary for the effective and efficient administration of the Elected Officers' Class.

**History.**—ss. 2, 4, ch. 72-345; s. 1, ch. 72-359; s. 1, ch. 74-215; s. 1, ch. 75-296; s. 1, ch. 76-240; s. 1, ch. 77-464; s. 1, ch. 77-285; s. 4, ch. 78-308; s. 26, ch. 79-164; s. 2, ch. 79-375; s. 2, ch. 79-377; s. 2, ch. 80-131; s. 2, ch. 81-214; s. 3, ch. 81-307; s. 1, ch. 82-114; s. 36, ch. 83-217; s. 2, ch. 83-283; ss. 6, 8, 15, ch. 84-266; s. 2, ch. 85-220; s. 2, ch. 86-137; ss. 7, 8, ch. 86-180; s. 6, ch. 87-373; s. 9, ch. 88-382; s. 8, ch. 90-274; s. 4, ch. 92-122; s. 1, ch. 93-157; s. 5, ch. 93-193; s. 2, ch. 93-285; s. 1, ch. 94-254; ss. 6, 17, ch. 94-259; s. 1424, ch. 95-147; s. 17, ch. 95-392; s. 4, ch. 96-423; s. 3, ch. 97-180; s. 4, ch. 98-138; s. 4, ch. 98-413; s. 3, ch. 99-9; ss. 32, 33, ch. 99-255; s. 7, ch. 99-392; s. 20, ch. 2000-151; s. 7, ch. 2000-169; s. 8, ch. 2001-235; ss. 1, 11, 14, ch. 2001-262; s. 21, ch. 2002-1; s. 2, ch. 2002-177; s. 4, ch. 2002-273; s. 4, ch. 2009-209; s. 9, ch. 2011-68; s. 2, ch. 2013-53; s. 2, ch. 2014-54; s. 2, ch. 2015-227; s. 4, ch. 2019-98.

### **121.053 Participation in the Elected Officers' Class for retired members.—**

(1) A member who retired under an existing system as defined in s. 121.021 and receives a retirement benefit, and who subsequently serves in an office covered by the Elected Officers' Class for a period of at least 6 years, is entitled to receive an additional retirement benefit for elected officer service completed before July 1, 1990, under the Elected Officers' Class of the Florida Retirement System, as follows:

(a) Upon completion of 6 or more years of creditable service in an office covered by the Elected Officers' Class, such member shall notify the administrator of his or her intent to purchase elected officer service completed before July 1, 1990, and shall pay the member contribution applicable for the period being claimed, plus 4 percent interest compounded annually from the first year of service claimed until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until full payment is made to the Florida Retirement System Trust Fund; however, such member may purchase retirement credit under the Elected Officers' Class only for service as an elected officer.

(b) Upon payment of the amount specified in paragraph (a), the employer shall pay into the Florida Retirement System Trust Fund the applicable employer contribution for the period of elected officer service completed before July 1, 1990, plus 4 percent interest compounded annually from the first year of service claimed until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until full payment is made to the Florida Retirement System Trust Fund.

(2) A retired member of the Florida Retirement System, or an existing system as defined in s. 121.021, who, beginning July 1, 1990, through June 30, 2010, serves in an elective office covered by the Elected Officers' Class shall be enrolled in the appropriate subclass of the Elected Officers' Class of the Florida Retirement System, and applicable contributions shall be paid into the Florida Retirement System Trust Fund as provided in s. 121.052(7).

(a) The member may continue to receive retirement benefits as well as compensation for the elected officer service if he or she remains in an elective office covered by the Elected Officers' Class.

(b) If the member serves in an elective office covered by the Elected Officers' Class and becomes vested under that class, he or she is entitled to receive an additional retirement benefit for the elected officer service.

(c) The member is entitled to purchase additional retirement credit in the Elected Officers' Class for any postretirement service performed in an elected position eligible for the Elected Officers' Class before July 1, 1990, or in the Regular Class for any postretirement service performed in any other regularly established position before July 1, 1991, by paying the applicable Elected Officers' Class or Regular Class employee and employer contributions for the period being claimed, plus 4 percent interest compounded annually from the first year of service claimed until July 1, 1975, and 6.5 percent interest compounded thereafter, until full payment is made to the Florida Retirement System Trust

Fund. The contribution for postretirement Regular Class service between July 1, 1985, and July 1, 1991, for which the reemployed retiree contribution was paid, is the difference between the contribution and the total applicable contribution for the period being claimed, plus interest. The employer may pay the applicable employer contribution in lieu of the member. If a member does not wish to claim credit for all of the postretirement service for which he or she is eligible, the service the member claims must be the most recent service. Any retiree who served in an elective office before July 1, 1990, suspended his or her retirement benefits, and had his or her Florida Retirement System membership reinstated shall, upon retirement from such office, have his or her retirement benefit recalculated to include the additional service and compensation earned.

(d) Creditable service for which credit was received, or which remained unclaimed, at retirement may not be claimed or applied toward service credit earned following renewed membership. However, service earned in accordance with the renewed membership provisions of s. 121.122 may be used in conjunction with creditable service earned under this subsection, if applicable vesting requirements and other existing statutory conditions required by this chapter are met.

However, an officer electing to participate in the Deferred Retirement Option Program on or before June 30, 2002, is not required to terminate and remains subject to the provisions of this subsection as adopted in s. 1, chapter 2001-235, Laws of Florida.

(3) On or after July 1, 2010:

(a) A retiree of a state-administered retirement system who is initially reemployed in an elective office in a regularly established position with a covered employer may not reenroll in the Florida Retirement System, except as provided in s. 121.122.

(b) An elected officer who is elected or appointed to an elective office and is participating in the Deferred Retirement Option Program is subject to termination as defined in s. 121.021 upon completion of his or her DROP participation period. An elected official may defer termination as provided in subsection (7).

(4) Upon attaining his or her normal retirement date, and upon application to the administrator of the intent to retire, a member qualifying under subsection (1) or subsection (2) shall receive a monthly benefit under this section, in addition to any benefits already being received, which shall commence on the last day of the month of retirement and be payable on the last day of the month thereafter during his or her lifetime. The amount of the monthly benefit is the total percentage of retirement credit purchased under this section multiplied by the member's average monthly compensation as an elected officer, adjusted according to the option selected at retirement under s. 121.091(6).

(5) Any renewed member, as described in s. 121.122(1), (3), (4), or (5), who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the maximum health insurance subsidy. Any additional subsidy due because of such additional credit may be

received only at the time of payment of the second career retirement benefit. The total health insurance subsidy received from initial and renewed membership may not exceed the maximum allowed in s. 112.363.

(6) A retired judge consenting to temporary duty in any court, as assigned by the Chief Justice of the Supreme Court in accordance with s. 2, Art. V of the State Constitution, is not subject to the renewed membership provisions of this section.

(7) A member who is elected or appointed to an elective office and who is participating in the Deferred Retirement Option Program is not subject to termination as defined in s. 121.021, or reemployment limitations as provided in s. 121.091(9), until the end of his or her current term of office or, if the officer is consecutively elected or reelected to an elective office eligible for coverage under the Florida Retirement System, until he or she no longer holds an elective office, as follows:

(a) At the end of the 60-month DROP period:

1. The officer's DROP account may not accrue additional monthly benefits, but does continue to earn interest as provided in s. 121.091(13). However, an officer whose DROP participation begins on or after July 1, 2010, may not continue to earn such interest.

2. Retirement contributions, except for unfunded actuarial liability and health insurance subsidy contributions required in ss. 121.71(5) and 121.76, are not required of the employer of the elected officer, and additional retirement credit may not be earned under the Florida Retirement System.

(b) An elected officer may voluntarily terminate his or her elective office at any time and receive his or her DROP proceeds. However, until termination occurs, an elected officer whose termination limitations are extended by this section is ineligible for renewed membership in the system and may not receive pension payments, DROP lump sum payments, or any other state payment other than the statutorily determined salary, travel, and per diem for the elective office.

(c) Upon termination, the officer shall receive his or her accumulated DROP account, plus interest, and shall accrue and commence receiving monthly retirement benefits, which must be paid on a prospective basis only.

**History.**—s. 4, ch. 77-469; s. 5, ch. 83-76; s. 9, ch. 90-274; s. 5, ch. 92-122; s. 771, ch. 95-147; s. 4, ch. 97-180; s. 5, ch. 98-138; s. 4, ch. 99-9; s. 8, ch. 2000-169; s. 1, ch. 2001-235; s. 13, ch. 2002-273; s. 5, ch. 2009-209; s. 13, ch. 2010-5; s. 10, ch. 2011-68; s. 7, ch. 2017-88.

#### **121.055 Senior Management Service Class.—**

There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)(a) Participation in the Senior Management Service Class shall be limited to and compulsory for any member of the Florida Retirement System who holds a position in the Senior Management Service of the State of Florida, established by part III of chapter 110, unless such member elects, within the time specified herein, to participate in the Senior Management Service Optional Annuity Program as established in subsection (6).

(b)1. Except as provided in subparagraph 2., effective January 1, 1990, participation in the Senior

Management Service Class is compulsory for the president of each community college, the manager of each participating municipality or county, and all appointed district school superintendents. Effective January 1, 1994, additional positions may be designated for inclusion in the Senior Management Service Class if:

a. Positions to be included in the class are designated by the local agency employer. Notice of intent to designate positions for inclusion in the class must be published for at least 2 consecutive weeks if published by Internet publication as provided in s. 50.0211(5) or, if published in print, once a week for 2 consecutive weeks in a newspaper qualified under chapter 50 that is published in the county or counties affected.

b. Up to 10 nonelective full-time positions may be designated for each local agency employer reporting to the department; for local agencies with 100 or more regularly established positions, additional nonelective full-time positions may be designated, not to exceed 1 percent of the regularly established positions within the agency.

c. Each position added to the class must be a managerial or policymaking position filled by an employee who is not subject to continuing contract and serves at the pleasure of the local agency employer without civil service protection, and who:

(I) Heads an organizational unit; or

(II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

2. In lieu of participation in the Senior Management Service Class, members of the Senior Management Service Class, pursuant to subparagraph 1., may withdraw from the Florida Retirement System altogether. The decision to withdraw from the system is irrevocable as long as the employee holds the position. Any service creditable under the Senior Management Service Class shall be retained after the member withdraws from the system; however, additional service credit in the Senior Management Service Class may not be earned after such withdrawal. Such members are not eligible to participate in the Senior Management Service Optional Annuity Program.

3. Effective January 1, 2006, through June 30, 2006, an employee who has withdrawn from the Florida Retirement System under subparagraph 2. has one opportunity to elect to participate in the pension plan or the investment plan.

a. If the employee elects to participate in the investment plan, membership shall be prospective, and the applicable provisions of s. 121.4501(4) govern the election.

b. If the employee elects to participate in the pension plan, the employee shall, upon payment to the system trust fund of the amount calculated under sub-sub-subparagraph (I), receive service credit for prior service based upon the time during which the employee had withdrawn from the system.

(I) The cost for such credit shall be an amount representing the actuarial accrued liability for the affected period of service. The cost shall be calculated using the discount rate and other relevant actuarial assumptions that were used to value the pension plan

liabilities in the most recent actuarial valuation. The calculation must include any service already maintained under the pension plan in addition to the period of withdrawal. The actuarial accrued liability attributable to any service already maintained under the pension plan shall be applied as a credit to the total cost resulting from the calculation. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an actuary.

(II) The employee must transfer a sum representing the net cost owed for the actuarial accrued liability in sub-sub-subparagraph (I) immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and the period of withdrawal.

(c)1. Effective January 1, 1990, participation in the Senior Management Service Class shall be compulsory for up to 75 nonelective positions at the level of committee staff director or higher or equivalent managerial or policymaking positions within the House of Representatives, as selected by the Speaker of the House of Representatives, up to 50 nonelective positions at the level of committee staff director or higher or equivalent managerial or policymaking positions within the Senate, as selected by the President of the Senate, all staff directors of joint committees and service offices of the Legislature, the Auditor General and up to 9 managerial or policymaking positions within his or her office as selected by the Auditor General, and the executive director of the Commission on Ethics.

2. Participation in this class shall be compulsory, except as provided in subparagraph 3., for any legislative employee who holds a position designated for coverage in the Senior Management Service Class, and such participation shall continue until the employee terminates employment in a covered position.

3. In lieu of participation in the Senior Management Service Class, at the discretion of the President of the Senate and the Speaker of the House of Representatives, such members may participate in the Senior Management Service Optional Annuity Program as established in subsection (6).

(d) Effective January 1, 1991, participation in the Senior Management Service Class shall be compulsory for any member of the Florida Retirement System in a position that has been designated eligible for inclusion in the Executive Service of the State University System or who holds a position as president of a state university, unless such member elects, pursuant to s. 121.35, to participate in the optional retirement program.

(e) Effective January 1, 1991, participation in the Senior Management Service Class shall be compulsory for the number of senior managers who have policymaking authority with the State Board of Administration, as determined by the Governor, Chief Financial Officer, and Attorney General acting as the State Board of Administration, unless such member elects to participate in the Senior Management Service Optional Annuity Program as established in subsection (6) in lieu of participation in the Senior Management Service Class. Such election shall be made in writing and filed with the division and the personnel officer of the State

Board of Administration within 90 days after becoming eligible for membership in the Senior Management Service Class.

(f) Effective July 1, 1997:

1. Except as provided in subparagraph 3., an elected state officer eligible for membership in the Elected Officers' Class under s. 121.052(2)(a), (b), or (c) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office or within 6 months after this act becomes a law for serving elected state officers, elect to participate in the Senior Management Service Optional Annuity Program, as provided in subsection (6), in lieu of membership in the Senior Management Service Class.

2. Except as provided in subparagraph 3., an elected officer of a local agency employer eligible for membership in the Elected Officers' Class under s. 121.052(2)(d) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office, or within 6 months after this act becomes a law for serving elected officers of a local agency employer, elect to withdraw from the Florida Retirement System, as provided in subparagraph (b)2., in lieu of membership in the Senior Management Service Class.

3. A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, through June 30, 2017, as an elected official eligible for the Elected Officers' Class may not be enrolled in renewed membership in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program as provided in subsection (6), and may not withdraw from the Florida Retirement System as a renewed member as provided in subparagraph (b)2., as applicable, in lieu of membership in the Senior Management Service Class. Effective July 1, 2017, a retiree of the Senior Management Service Optional Annuity Program who is reemployed in a regularly established position with a covered employer shall be enrolled as a renewed member as provided in s. 121.122.

(g) Effective July 1, 1996, participation in the Senior Management Service Class shall be compulsory for any member of the Florida Retirement System employed with the Department of Military Affairs in the positions of the Adjutant General, Assistant Adjutant General-Army, Assistant Adjutant General-Air, State Quartermaster, Director of Human Resources, Director of Legislative Affairs, Inspector General, Executive Officer, and additional directors as designated by the agency head, not to exceed a total of 10 positions. In lieu of participation in the Senior Management Service Class, such members may participate in the Senior Management Service Optional Annuity Program as established in subsection (6).

(h)1. Except as provided in subparagraph 3., effective January 1, 1994, participation in the Senior Management Service Class shall be compulsory for the State Courts Administrator and the Deputy State Courts Administrators, the Clerk of the Supreme Court, the Marshal of the Supreme Court, the Executive Director of the Justice Administrative Commission, the

capital collateral regional counsel, the clerks of the district courts of appeals, the marshals of the district courts of appeals, and the trial court administrator and the Chief Deputy Court Administrator in each judicial circuit. Effective January 1, 1994, additional positions in the offices of the state attorney and public defender in each judicial circuit may be designated for inclusion in the Senior Management Service Class of the Florida Retirement System, provided that:

a. Positions to be included in the class shall be designated by the state attorney or public defender, as appropriate. Notice of intent to designate positions for inclusion in the class shall be published for at least 2 consecutive weeks by Internet publication as provided in s. 50.0211(5) or, if published in print, once a week for 2 consecutive weeks in a newspaper qualified under chapter 50 in the county or counties affected.

b. One nonelective full-time position may be designated for each state attorney and public defender reporting to the Department of Management Services; for agencies with 200 or more regularly established positions under the state attorney or public defender, additional nonelective full-time positions may be designated, not to exceed 0.5 percent of the regularly established positions within the agency.

c. Each position added to the class must be a managerial or policymaking position filled by an employee who serves at the pleasure of the state attorney or public defender without civil service protection, and who:

(I) Heads an organizational unit; or

(II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

2. Participation in this class shall be compulsory, except as provided in subparagraph 3., for any judicial employee who holds a position designated for coverage in the Senior Management Service Class, and such participation shall continue until the employee terminates employment in a covered position. Effective January 1, 2001, participation in this class is compulsory for assistant state attorneys, assistant statewide prosecutors, assistant public defenders, and assistant capital collateral regional counsel. Effective January 1, 2002, participation in this class is compulsory for assistant attorneys general.

3. In lieu of participation in the Senior Management Service Class, such members, excluding assistant state attorneys, assistant public defenders, assistant statewide prosecutors, assistant attorneys general, and assistant capital collateral regional counsel, may participate in the Senior Management Service Optional Annuity Program as established in subsection (6).

(i)1. Except as provided in subparagraph 2., effective July 1, 1999, participation in the Senior Management Service Class is compulsory for any member of the Florida Retirement System who is employed as the Deputy Chief Judge of Compensation Claims or as a judge of compensation claims with the Office of the Judges of Compensation Claims within the Division of Administrative Hearings.

2. In lieu of participating in the Senior Management Service Class, the Deputy Chief Judge of



Compensation Claims or a judge of compensation claims may participate in the Senior Management Service Optional Annuity Program established under subsection (6).

(j) Except as may otherwise be provided, a member of the Senior Management Service Class may purchase additional retirement credit in such class for creditable service within the purview of the Senior Management Service Class retroactive to February 1, 1987, and may upgrade retirement credit for such service, to the extent of 2 percent of the member's average monthly compensation as specified in paragraph (4)(d) for such service. Contributions for upgrading the additional Senior Management Service credit must be equal to the difference in the employer and, if applicable, employee contributions paid and the Senior Management Service Class contribution rate as a percentage of gross salary in effect for the period being claimed, plus interest thereon at the rate of 6.5 percent a year, compounded annually until the date of payment. This service credit may be purchased by the employer on behalf of the member.

(k) Any state attorney or public defender in the Elected Officers' Class who has creditable service as an assistant state attorney or assistant public defender may upgrade retirement credit for such service in accordance with the provisions of paragraph (j).

(l) For each metropolitan planning organization that has opted to become part of the Florida Retirement System, participation in the Senior Management Service Class shall be compulsory for the executive director or staff director of that metropolitan planning organization.

(m)1. Effective July 1, 2020, participation in the Senior Management Service Class is compulsory for each appointed criminal conflict and civil regional counsel and each district's assistant regional counsel chiefs, administrative directors, and chief investigators.

2. A Senior Management Service Class member under this paragraph may purchase additional retirement credit in the class for creditable service within the purview of the Senior Management Service Class retroactive to October 1, 2007, and may upgrade retirement credit for such service in accordance with paragraph (j). However, this service credit may not be purchased by the employer on behalf of the member.

(2)(a) Participation in this class shall cease when the member terminates employment in an eligible position. Once a position is designated as eligible for inclusion in the class, that position shall not be removed from the class unless the duties and responsibilities of the position change substantially and therefore no longer meet the requirements provided in this section for participation in the class, except as provided in paragraph (b).

(b) Effective July 1, 2015, and every 5 years thereafter, each local agency employer may between July 1 and December 31 reassess its designation of positions for inclusion in the Senior Management Service Class as provided in paragraph (1)(b), and may request removal from the class of any such positions that it deems appropriate. Such removal of any previously designated positions shall be effective on the first day of

the month following written notification of removal to the division before January 1.

(3)(a) The following table states the required retirement contribution rates for members of the Senior Management Service Class and their employers in terms of a percentage of the member's gross compensation. A change in the contribution rate is effective with the first salary paid on or after the beginning date of the change. Contributions shall be made for each pay period and are in addition to the contributions required for social security and the Retiree Health Insurance Subsidy Trust Fund.

1.

Dates of Contribution Rate Changes	Members	Employers
July 1, 2001, through June 30, 2002	0%	11.73%

2. Effective July 1, 2002, the required retirement contribution rate shall be as specified in s. 121.71.

(b) The employer paying the salary of a member of the Senior Management Service Class shall contribute an amount as specified in this section or s. 121.71, as appropriate, which shall constitute the entire employer retirement contribution with respect to such member. The employer shall also withhold one-half of the entire contribution of the member required for social security coverage. Effective July 1, 2011, each member shall pay employee contributions as specified in s. 121.71.

(c) Upon termination of employment from all participating employers for 3 calendar months for any reason other than retirement pursuant to s. 121.021(39)(c), a member may receive a refund of all contributions he or she has made to the pension plan, subject to the restrictions otherwise provided in this chapter. Partial refunds are not permitted. The refund shall not include any interest earnings on the contributions for a member of the pension plan. Employer contributions made on behalf of the member are not refundable. A member may not receive a refund of employee contributions if a pending or an approved qualified domestic relations order is filed against the member's retirement account. By obtaining a refund of contributions, a member waives all rights under the Florida Retirement System and the health insurance subsidy provided under s. 112.363 to the service credit represented by the refunded contributions, except the right to purchase his or her prior service credit in accordance with s. 121.081(2).

(d) The following table states the required employer contribution on behalf of each member of the Senior Management Service Class in terms of a percentage of the member's gross compensation. Such contribution constitutes the entire health insurance subsidy contribution with respect to each such member. A change in the contribution rate is effective with the first salary paid on or after the beginning date of the change. The retiree health insurance subsidy contribution rate is as follows:

Dates of Contribution Rate Changes	Contribution Rate
October 1, 1987, through December 31, 1988	0.24%

Dates of Contribution Rate Changes	Contribution Rate
January 1, 1989, through December 31, 1993	0.48%
January 1, 1994, through December 31, 1994	0.56%
January 1, 1995, through June 30, 1998	0.66%
July 1, 1998, through June 30, 2001	0.94%
July 1, 2001, through June 30, 2013	1.11%
July 1, 2013, through June 30, 2014	1.20%
July 1, 2014, through June 30, 2015	1.26%
Effective July 1, 2015	1.66%

Such contributions and accompanying payroll data are due and payable no later than the 5th working day of the month immediately following the month during which the payroll period ended and shall be deposited by the administrator in the Retiree Health Insurance Subsidy Trust Fund.

(4)(a) The definitions set forth in s. 121.021 and all other provisions of this chapter shall apply to the Senior Management Service Class, except the definitions and provisions in conflict with, or superseded or modified by, the provisions of this section.

(b) Service in an eligible position before February 1, 1987, or after January 31, 1987, shall satisfy the requirement of attaining the normal retirement date as defined in s. 121.021(29) for a Senior Management Service Class member, if the employee is a member of the Senior Management Service Class after January 31, 1987. A member of this class who fails to complete the years of creditable service required for vesting in an eligible position must satisfy the requirements for the normal retirement date for a regular member as provided in s. 121.021(29) and vesting as provided in s. 121.021(45).

(c) The average final compensation of a member of this class shall be as defined in s. 121.021(24).

(d) A member of the Senior Management Service Class shall receive retirement credit at the rate of 2 percent of average final compensation for each year of service in such class after January 31, 1987.

(5) A member of the Senior Management Service Class shall retain all rights and creditable service accumulated in the Florida Retirement System prior to membership in the Senior Management Service Class.

(6)(a) *Senior Management Service Optional Annuity Program.*—The Department of Management Services shall establish a Senior Management Service Optional Annuity Program under which contracts providing retirement, death, and disability benefits may be purchased for those employees who elect to participate in the optional annuity program. The benefits to be provided for or on behalf of participants in such optional annuity program shall be provided through individual contracts or individual certificates issued for group annuity contracts, which may be fixed, variable, or a combination thereof, in accordance with s. 401(a) of the Internal Revenue Code. Any such individual contract or certificate shall state the annuity plan on its face page, and shall include, but not be limited to, a statement of ownership, the contract benefits, annuity income options, limitations, expense charges, and surrender

charges, if any. The employing agency shall contribute, as provided in this section, toward the purchase of such optional benefits which shall be fully and immediately vested in the participants.

(b) *Retirement service credit.*—An eligible employee who is a member of the Florida Retirement System or an existing retirement system at the time of his or her election to participate in the Senior Management Service Optional Annuity Program shall retain all retirement service credit earned under the retirement system from which he or she transferred; however, no additional service credit in the Florida Retirement System or existing retirement system shall be earned while the employee participates in the optional annuity program, nor shall the employee be eligible for disability retirement under the Florida Retirement System or existing retirement system.

(c) *Participation.*—

1. An eligible employee who is employed on or before February 1, 1987, may elect to participate in the optional annuity program in lieu of participating in the Senior Management Service Class. Such election shall be made in writing and filed with the department and the personnel officer of the employer on or before May 1, 1987. An eligible employee who is employed on or before February 1, 1987, and who fails to make an election to participate in the optional annuity program by May 1, 1987, is deemed to have elected membership in the Senior Management Service Class.

2. Except as provided in subparagraph 6., an employee who becomes eligible to participate in the optional annuity program by reason of initial employment commencing after February 1, 1987, may, within 90 days after the date of commencing employment, elect to participate in the optional annuity program. Such election shall be made in writing and filed with the personnel officer of the employer. An eligible employee who does not within 90 days after commencing employment elect to participate in the optional annuity program is deemed to have elected membership in the Senior Management Service Class.

3. A person who is appointed to a position in the Senior Management Service Class and who is a member of an existing retirement system or the Special Risk or Special Risk Administrative Support Classes of the Florida Retirement System may elect to remain in such system or class in lieu of participating in the Senior Management Service Class or optional annuity program. Such election shall be made in writing and filed with the department and the personnel officer of the employer within 90 days after such appointment. An eligible employee who fails to make an election to participate in the existing system, the Special Risk Class of the Florida Retirement System, the Special Risk Administrative Support Class of the Florida Retirement System, or the optional annuity program is deemed to have elected membership in the Senior Management Service Class.

4. Except as provided in subparagraph 5., an employee's election to participate in the optional annuity program is irrevocable if the employee continues to be employed in an eligible position and continues to meet the eligibility requirements set forth in this paragraph.

5. Effective from July 1, 2002, through September 30, 2002, an active employee in a regularly established position who has elected to participate in the Senior Management Service Optional Annuity Program has one opportunity to choose to move from the Senior Management Service Optional Annuity Program to the Florida Retirement System Pension Plan.

a. The election shall be made in writing and filed with the department and the personnel officer of the employer before October 1, 2002, or, in the case of an active employee who is on a leave of absence on July 1, 2002, within 90 days after the conclusion of the leave of absence. This election is irrevocable.

b. The employee shall receive service credit under the pension plan equal to his or her years of service under the Senior Management Service Optional Annuity Program. The cost for such credit is the amount representing the present value of that employee's accumulated benefit obligation for the affected period of service.

c. The employee shall transfer the total accumulated employer contributions and earnings on deposit in his or her Senior Management Service Optional Annuity Program account. If the transferred amount is not sufficient to pay the amount due, the employee shall pay a sum representing the remainder of the amount due. The employee may not retain any employer contributions or earnings from the Senior Management Service Optional Annuity Program account.

6. A retiree of a state-administered retirement system who is initially reemployed on or after July 1, 2010, through June 30, 2017, may not renew membership in the Senior Management Service Optional Annuity Program. Effective July 1, 2017, a retiree of the Senior Management Service Optional Annuity Program who is reemployed in a regularly established position with a covered employer shall be enrolled as a renewed member as provided in s. 121.122.

7. Effective July 1, 2017, the Senior Management Service Optional Annuity Program is closed to new members. A member enrolled in the Senior Management Service Optional Annuity Program before July 1, 2017, may retain his or her membership in the annuity program.

(d) *Contributions.*—

1.a. Through June 30, 2001, each employer shall contribute on behalf of each member of the Senior Management Service Optional Annuity Program an amount equal to the normal cost portion of the employer retirement contribution which would be required if the member were a Senior Management Service Class member of the Florida Retirement System Pension Plan, plus the portion of the contribution rate required in s. 112.363(8) that would otherwise be assigned to the Retiree Health Insurance Subsidy Trust Fund.

b. Effective July 1, 2001, through June 30, 2011, each employer shall contribute on behalf of each member of the optional annuity program an amount equal to 12.49 percent of the employee's gross monthly compensation.

c. Effective July 1, 2011, through June 30, 2012, each member of the optional annuity program shall contribute an amount equal to the employee

contribution required under s. 121.71(3). The employer shall contribute on behalf of such employee an amount equal to the difference between 12.49 percent of the employee's gross monthly compensation and the amount equal to the employee's required contribution based on the employee's gross monthly compensation.

d. Effective July 1, 2012, each member of the optional annuity program shall contribute an amount equal to the employee contribution required under s. 121.71. The employer shall contribute on behalf of such employee an amount equal to the difference between 9.27 percent of the employee's gross monthly compensation and the amount equal to the employee's required contribution based on the employee's gross monthly compensation.

e. The department shall deduct an amount approved by the Legislature to provide for the administration of this program. Payment of the contributions, including contributions made by the employee, shall be made by the employer to the department, which shall forward the contributions to the designated company or companies contracting for payment of benefits for the member under the program.

2. Each employer shall contribute on behalf of each member of the Senior Management Service Optional Annuity Program an amount equal to the unfunded actuarial accrued liability portion of the employer contribution which would be required for members of the Senior Management Service Class in the Florida Retirement System. This contribution shall be paid to the department for transfer to the Florida Retirement System Trust Fund.

3. An Optional Annuity Program Trust Fund shall be established in the State Treasury and administered by the department to make payments to provider companies on behalf of the optional annuity program members, and to transfer the unfunded liability portion of the state optional annuity program contributions to the Florida Retirement System Trust Fund.

4. Contributions required for social security by each employer and employee, in the amount required for social security coverage as now or hereafter may be provided by the federal Social Security Act shall be maintained for each member of the Senior Management Service retirement program and are in addition to the retirement contributions specified in this paragraph.

5. Each member of the optional annuity program may contribute by way of salary reduction or deduction a percentage amount of the employee's gross compensation not to exceed the percentage amount contributed by the employer to the optional annuity program. Payment of the employee's contributions shall be made by the employer to the department, which shall forward the contributions to the designated company or companies contracting for payment of benefits for the member under the program.

(e) *Benefits.*—

1. Benefits under the Senior Management Service Optional Annuity Program are payable only to members of the program, or their beneficiaries as designated by the member in the contract with the provider company, and must be paid by the designated company in accordance with the terms of the annuity contract

applicable to the member. A member must be terminated from all employment relationships with Florida Retirement System employers for 3 calendar months to begin receiving the employer-funded and employee-funded benefit. The department may authorize a distribution of up to 10 percent of the member's account after being terminated from employment with all participating employers for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021. The department may adopt rules to implement this subparagraph. The member must meet the definition of termination in s. 121.021(39) beginning the month after receiving a benefit, including a distribution. Benefits funded by employer and employee contributions are payable under the terms of the contract to the member, his or her beneficiary, or his or her estate, in addition to:

a. A lump-sum payment to the beneficiary upon the death of the member;

b. A cash-out of a de minimis account upon the request of a former member who has been terminated for a minimum of 6 calendar months from the employment that entitled him or her to optional annuity program participation. Such cash-out must be a complete liquidation of the account balance with that company and is subject to the Internal Revenue Code;

c. A mandatory distribution of a de minimis account of a former member who has been terminated for a minimum of 6 calendar months from the employment that entitled him or her to optional annuity program participation as authorized by the department; or

d. A lump-sum direct rollover distribution whereby all accrued benefits, plus interest and investment earnings, are paid from the member's account directly to the custodian of an eligible retirement plan, as defined in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the member.

2. Under the Senior Management Service Optional Annuity Program, benefits, including employee contributions, are not payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code.

3. The benefits payable to any person under the Senior Management Service Optional Annuity Program, and any contribution accumulated under such program, are not subject to assignment, execution, or attachment or to any legal process whatsoever.

4. Except as provided in subparagraph 5., a member who terminates employment and receives a distribution, including a rollover or trustee-to-trustee transfer, funded by employer and required employee contributions is a retiree of a state-administered retirement system. A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, is not eligible to be enrolled in renewed membership.

5. A member who receives optional annuity program benefits funded by employer and employee contributions as a mandatory distribution of a de minimis account authorized by the department is not considered a retiree.

As used in this paragraph, a "de minimis account" means an account with a provider company containing employer and employee contributions and accumulated earnings of not more than \$5,000 made under this chapter.

(f) *Administration.*—

1. The Senior Management Service Optional Annuity Program authorized by this section shall be administered by the department. The department shall designate one or more provider companies from which annuity contracts may be purchased under the program and shall approve the form and content of the contracts. The department shall sign a contract with each of the provider companies and shall evaluate the performance of the provider companies on a continuing basis. The department may terminate the services of a provider company for reasons stated in the contract. The department shall adopt rules establishing its responsibilities and the responsibilities of employers in administering the optional annuity program.

2. Effective July 1, 1997, the State Board of Administration shall review and make recommendations to the department on the acceptability of all investment products proposed by provider companies of the optional annuity program before such products are offered through annuity contracts to the participants and may advise the department of any changes deemed necessary to ensure that the optional annuity program offers an acceptable mix of investment products. The department shall make the final determination as to whether an investment product will be approved for the program.

3. The provisions of each contract applicable to a participant in the Senior Management Service Optional Annuity Program shall be contained in a written program description which shall include a report of pertinent financial and actuarial information on the solvency and actuarial soundness of the program and the benefits applicable to the participant. Such description shall be furnished by the company or companies to each participant in the program and to the department upon commencement of participation in the program and annually thereafter.

4. The department shall ensure that each participant in the Senior Management Service Optional Annuity Program is provided an accounting of the total contribution and the annual contribution made by and on behalf of such participants.

(g) *Dual employment.*—A participant in the optional annuity program may not participate in more than one state-administered retirement system, plan, or class simultaneously. The following shall apply to a participant who is or becomes dually employed:

1. A participant who is or becomes dually employed in two or more positions covered by the Florida Retirement System, one of which is eligible for the

optional annuity program and one of which is not, shall make one of the following choices:

a. Remain a member of the optional annuity program, in which case contributions shall be paid as required only on the salary earned in the position eligible for the optional annuity program during the period of dual employment;

b. Elect, within 90 days after becoming dually employed, membership in the Regular Class of the Florida Retirement System in lieu of the optional annuity program, in which case contributions shall be paid as required on the total salary received for all employment, and, at retirement, the member's average final compensation used to calculate any benefits for which he or she becomes eligible under the Florida Retirement System shall be based on all salary reported for all covered positions during the period of dual employment; or

c. If dually employed in an elected office eligible for the Elected Officers' Class, select, within 6 months after assuming office, membership in the Elected Officers' Class, in which case, participation in the optional annuity program shall cease for the period of dual employment, retirement contributions shall be paid as required only on the salary earned as an elected officer, and, at retirement, the member's benefit under the Florida Retirement System shall be based only on the salary received as an elected officer for the period of dual employment.

2. When such member ceases to be dually employed, he or she shall make one of the following choices:

a. If the position in which he or she remains is a position that is eligible for the optional annuity program, he or she may, within 90 days after ceasing dual employment, elect to remain in the Florida Retirement System class for which he or she is eligible or to again become a participant in the optional annuity program. Failure to elect membership in the optional annuity program within 90 days shall result in compulsory membership in the Florida Retirement System; or

b. If the position in which he or she remains is not a position that is eligible for the optional annuity program, he or she shall participate in the Florida Retirement System class for which he or she is eligible.

**History.**—s. 14, ch. 86-149; s. 7, ch. 87-373; s. 10, ch. 88-382; s. 2, ch. 89-126; s. 35, ch. 89-207; s. 11, ch. 90-274; s. 19, ch. 90-365; s. 56, ch. 92-279; s. 55, ch. 92-326; s. 6, ch. 93-193; s. 3, ch. 93-285; s. 7, ch. 94-259; s. 1425, ch. 95-147; s. 2, ch. 96-278; s. 6, ch. 96-368; s. 5, ch. 96-423; s. 5, ch. 97-180; s. 9, ch. 98-136; s. 6, ch. 98-138; s. 5, ch. 98-413; s. 4, ch. 99-7; s. 5, ch. 99-9; s. 34, ch. 99-255; ss. 1, 2, ch. 99-291; s. 8, ch. 99-392; s. 19, ch. 2000-169; s. 5, ch. 2001-91; s. 4, ch. 2001-235; ss. 2, 7, 11, 15, ch. 2001-262; s. 147, ch. 2001-266; ss. 3, 12, ch. 2002-177; s. 5, ch. 2002-273; s. 12, ch. 2003-1; s. 7, ch. 2003-6; s. 141, ch. 2003-261; s. 1, ch. 2005-205; s. 8, ch. 2007-196; s. 6, ch. 2009-209; s. 11, ch. 2011-68; s. 2, ch. 2012-146; s. 4, ch. 2012-222; s. 15, ch. 2013-15; s. 3, ch. 2013-53; s. 3, ch. 2014-54; s. 1, ch. 2015-149; s. 3, ch. 2015-227; s. 8, ch. 2017-88; s. 1, ch. 2020-120; s. 12, ch. 2021-17; s. 2, ch. 2021-148.

#### 121.061 Funding.—

(1) Commencing December 1, 1970, all employers withholding contributions required of members under this chapter for purposes of providing retirement benefits and social security benefits to or on behalf of such members shall budget, set aside, and pay over to the administrator, for deposit into the proper retirement and social security trust funds, matching payments for

retirement and social security contributions as required by this chapter.

(2)(a) Should any employer other than a state employer fail to make the retirement and social security contributions, both member and employer contributions, required by this chapter, then, upon request by the administrator, the Department of Revenue or the Department of Financial Services, as the case may be, shall deduct the amount owed by the employer from any funds to be distributed by it to the county, municipality, metropolitan planning organization, special district, or consolidated form of government. The amounts so deducted shall be transferred to the administrator for further distribution to the trust funds in accordance with this chapter.

(b) Should any employer for whom the municipality or county tax collector collects taxes, fail to make the retirement and social security contributions required by this chapter, the tax collector, at the request of the administrator and upon receipt of a certificate from the administrator showing the amount owed by the employer, shall deduct the amount so certified from any taxes collected for the employer and remit the amount to the administrator for further distribution to the trust funds in accordance with this chapter.

(c) The governing body of each county, municipality, metropolitan planning organization, special district, or consolidated form of government participating under this chapter or the administrator, acting individually or jointly, is hereby authorized to file and maintain an action in the courts of the state to require any employer to remit any retirement or social security member contributions or employer matching payments due the retirement or social security trust funds under the provisions of this chapter.

(d) Should the income of any constitutional fee officer, in any year, be insufficient to make the matching payments required by this chapter, the board of county commissioners shall provide such fee officer sufficient funds to make these required payments when due.

(3) The appropriations provided each state agency, beginning with the 1970-1971 fiscal year and each fiscal year thereafter, shall include sufficient amounts to pay the matching contributions for social security and retirement as required by this chapter. No state agency, whether its funds are provided by state appropriations or otherwise, shall employ any person or maintain any person on its payroll unless it has allotted for such person sufficient funds to meet these required payments. Should a state agency fail to make such payments, the administrator shall report same to the Governor and certify the amount due the system trust funds to the Executive Office of the Governor. If arrangements cannot be made for the state agency to pay said amount due, then the amount due is hereby appropriated and shall be paid from the General Revenue Fund of the state.

**History.**—s. 6, ch. 70-112; s. 1, ch. 70-439; s. 2, ch. 72-295; s. 88, ch. 79-190; s. 142, ch. 2003-261; s. 9, ch. 2007-196; s. 12, ch. 2011-68.

**121.071 Contributions.**—Contributions to the system shall be made as follows:

(1) The following tables state the required retirement contribution rates for members of the Regular

Class, Special Risk Class, or Special Risk Administrative Support Class and their employers in terms of a percentage of the member's gross compensation. A change in a contribution rate is effective with the first salary paid on or after the beginning date of the change. Contributions shall be made or deducted as may be appropriate for each pay period and are in addition to the contributions required for social security and the Retiree Health Insurance Subsidy Trust Fund.

(a)1. Retirement contributions for regular members are as follows:

Dates of Contribution Rate Changes	Members	Employers
July 1, 2001, through June 30, 2002	0%	9.91%

2. Effective July 1, 2002, the retirement contributions for regular members shall be specified in s. 121.71.

(b)1. Retirement contributions for special risk members are as follows:

Dates of Contribution Rate Changes	Members	Employers
July 1, 2001, through June 30, 2002	0%	22.07%

2. Effective July 1, 2002, retirement contributions for special risk members shall be specified in s. 121.71.

(c)1. Retirement contributions for special risk administrative support members are as follows:

Dates of Contribution Rate Changes	Members	Employers
July 1, 2001, through June 30, 2002	0%	12.55%

2. Effective July 1, 2002, retirement contributions for special risk administrative support members shall be specified in s. 121.71.

(2)(a) Effective January 1, 1975, or October 1, 1975, as applicable, and through June 30, 2011, each employer shall make the contribution required by subsection (1) by a procedure in which no employee's gross salary is reduced. Effective July 1, 2011, each employer and employee shall pay retirement contributions as specified in s. 121.71.

(b) Upon termination of employment from all participating employers for 3 calendar months for any reason other than retirement pursuant to s. 121.021(39)(c), a member may receive a refund of all contributions he or she has made to the pension plan, subject to the restrictions otherwise provided in this chapter. Partial refunds are not permitted. The refund may not include any interest earnings on the contributions for a member of the pension plan. Employer contributions made on behalf of the member are not refundable. A member may not receive a refund of employee contributions if a pending or an approved qualified domestic relations order is filed against his or her retirement account. By obtaining a refund of contributions, a member waives all rights under the Florida Retirement System and the

health insurance subsidy to the service credit represented by the refunded contributions, except the right to purchase his or her prior service credit in accordance with s. 121.081(2).

(3) The employer paying the salary of a member shall contribute an amount as specified in this section or s. 121.71, as appropriate, which shall constitute the entire employer retirement contribution with respect to such member. The employer shall also withhold one-half of the entire contribution of the member required for social security coverage. Contributions for social security by each member and each employer, in the amount required for social security coverage as now or hereafter provided by the federal Social Security Act, shall be in addition to contributions specified in subsection (1).

(4) The following table states the required employer contribution on behalf of each member of the Regular Class, Special Risk Class, or Special Risk Administrative Support Class in terms of a percentage of the member's gross compensation. Such contribution constitutes the entire health insurance subsidy contribution with respect to each such member. A change in the contribution rate is effective with the first salary paid on or after the beginning date of the change. The retiree health insurance subsidy contribution rate is as follows:

Dates of Contribution Rate Changes	Contribution Rate
October 1, 1987, through December 31, 1988	0.24%
January 1, 1989, through December 31, 1993	0.48%
January 1, 1994, through December 31, 1994	0.56%
January 1, 1995, through June 30, 1998	0.66%
July 1, 1998, through June 30, 2001	0.94%
July 1, 2001, through June 30, 2013	1.11%
July 1, 2013, through June 30, 2014	1.20%
July 1, 2014, through June 30, 2015	1.26%
Effective July 1, 2015	1.66%

Such contributions shall be deposited by the administrator in the Retiree Health Insurance Subsidy Trust Fund.

(5) Contributions made in accordance with subsections (1), (2), (3), and (4) and s. 121.71 shall be paid into the system trust funds in accordance with rules adopted by the administrator pursuant to chapter 120, except as may be otherwise specified herein. Effective July 1, 2002, contributions paid under subsections (1) and (4) and accompanying payroll data are due and payable no later than the 5th working day of the month immediately following the month during which the payroll period ended.

(6)(a) Required employee contributions for all service other than current service, including, but not limited to, prior service, past service, military service, leave-of-absence service, out-of-state service, and certain non-Florida Retirement System in-state service, shall be paid by cash, personal check, cashier's check, money order, or a direct rollover or transfer from a qualified plan as provided under the Internal Revenue Code. The payment must be accompanied by a statement identifying the service for which payment is made and shall be

made in a lump sum for the total amount due or in annual payments of not less than \$100, except for the final payment if less than \$100, unless another method of payment is authorized by law or rule.

(b) On and after July 1, 1972, all remittances made by a member for the purchase of optional creditable service shall be credited to the member's account. A refund of a member's retirement contributions at termination, as provided in paragraph (2)(b), shall include all such remittances made by the member and credited to his or her account. If requested, a member may, at the time of retirement, receive a refund of any contributions he or she made for the purchase of any optional creditable service. A member is not entitled to a refund of contributions paid by an employer, except for employee contributions made by an employer for an employee's past service earned prior to October 1, 1975.

(c) By obtaining a refund of contributions, a member waives all rights under the Florida Retirement System and the health insurance subsidy as provided in s. 112.363 to the service credit represented by the refunded contributions, except the right to purchase his or her prior service credit in accordance with s. 121.081(2).

(d) If a member or former member of the pension plan receives an invalid refund from the Florida Retirement System Trust Fund, such person must repay the full amount of the invalid refund, plus interest at 6.5 percent compounded annually on each June 30 from the date of refund until full payment is made to the trust fund. The invalid refund must be repaid before the member retires or, if applicable, transfers to the investment plan.

(e) The contributions required of a member of the Teachers' Retirement System who transfers to the Florida Retirement System must be adjusted, based on the rate of 6.25 percent of salary earned while a member of the Teachers' Retirement System. Any overpayment that results from this adjustment will be refunded to the member, while any amount due, plus interest compounded annually, must be paid by the member prior to retirement. Effective upon the date of transfer to the Florida Retirement System, contributions shall be paid as required under this chapter.

(7) Benefits, including employee contributions, are not payable under the pension plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code.

**History.**—s. 7, ch. 70-112; ss. 4, 13, ch. 74-302; s. 1, ch. 74-376; s. 2, ch. 77-467; s. 5, ch. 78-308; s. 4, ch. 81-307; s. 2, ch. 82-169; s. 6, ch. 83-76; ss. 7, 8, ch. 84-266; s. 3, ch. 86-137; s. 8, ch. 87-373; s. 1, ch. 88-238; s. 11, ch. 88-382; s. 1, ch. 89-220; s. 12, ch. 90-274; s. 57, ch. 92-279; s. 55, ch. 92-326; s. 7, ch. 93-193; s. 8, ch. 94-259; s. 1426, ch. 95-147; s. 6, ch. 96-423; s. 7, ch. 98-138; s. 6, ch. 98-413; s. 35, ch. 99-255; s. 9, ch. 99-392; s. 2, ch. 2000-167; ss. 3, 11, 16, ch. 2001-262; s. 4, ch. 2002-177; s. 6, ch. 2002-273; s. 7, ch. 2009-209; s. 13, ch. 2011-68; s. 5, ch. 2012-222; s. 4, ch. 2013-53; s. 4, ch. 2014-54; s. 4, ch. 2015-227.

**121.081 Past service; prior service; contributions.**—Conditions under which past service or prior service may be claimed and credited are:

(1)(a) Past service, as defined in s. 121.021, may be claimed as creditable service by officers or employees of a municipality, metropolitan planning organization, charter school, charter technical career center, or special district who become a covered group under this system. The governing body of a covered group in compliance with s. 121.051(2)(b) may elect to provide benefits for past service earned before January 1, 1975, in accordance with this chapter, and the cost for such past service is established by applying the following formula: The member contribution for both regular and special risk members is 4 percent of the gross annual salary for each year of past service claimed, plus 4-percent employer matching contribution, plus 4-percent interest thereon compounded annually, figured on each year of past service, with interest compounded from date of annual salary earned until July 1, 1975, and 6.5-percent interest compounded annually thereafter until date of payment. Once the total cost for a member has been figured to date, then after July 1, 1975, 6.5-percent compounded interest shall be added each June 30 thereafter on any unpaid balance until the cost of such past service liability is paid in full. The following formula shall be used in calculating past service earned before January 1, 1975: (Annual gross salary multiplied by 8 percent) multiplied by the 4-percent or 6.5-percent compound interest table factor, as may be applicable. The resulting product equals cost to date for each particular year of past service.

(b) Past service earned after January 1, 1975, may be claimed by officers or employees of a municipality, metropolitan planning organization, charter school, charter technical career center, or special district who become a covered group under this system. The governing body of a covered group may elect to provide benefits for past service earned after January 1, 1975, in accordance with this chapter. The cost for such past service is established by applying the following formula: The employer shall contribute an amount equal to the employer contribution rate in effect at the time the service was earned and, if applicable, the employee contribution rate, multiplied by the employee's gross salary for each year of past service claimed, plus 6.5 percent interest thereon, compounded annually, for each year of past service, with interest compounded from date of annual salary earned until date of payment.

(c) If an employer joins the Florida Retirement System and does not elect to provide past service for the member at the time of joining, the member may claim and pay for the service as provided in paragraphs (a) and (b).

(d) Employment prior to January 1, 1968, in the Cuban Refugee Assistance Program administered by the Florida State Department of Public Welfare or the Florida State Board of Health shall be deemed to be included in past service as defined in s. 121.021(18), for the purposes of the Florida Retirement System, any other provisions of law notwithstanding and regardless of the fund from which such employment was paid. If credit for such service has not been granted under any

other state or federal system, any member of the Florida Retirement System or any system consolidated therein shall be entitled to receive past-service credit for his or her period of employment in the Cuban Refugee Assistance Program prior to January 1, 1968, in the manner provided in this subsection. However, in no event will eligibility for past service be established unless required contributions are paid into the Florida Retirement System for such period of past service and such contributions are not paid from general revenue funds of the state.

(e) Past service, as defined in s. 121.021, may be claimed as creditable service by a member of the Florida Retirement System who formerly was an officer or employee of a municipality, metropolitan planning organization, charter school, charter technical career center, or special district, notwithstanding the status or form of the retirement system, if any, of that municipality, metropolitan planning organization, charter school, charter technical career center, or special district and irrespective of whether such officers or employees now or hereafter become a covered group under the Florida Retirement System. Such member may claim creditable service and be entitled to the benefits accruing to the regular class of members as provided for the past service claimed under this paragraph by paying into the retirement trust fund an amount equal to the total actuarial cost of providing the additional benefit resulting from such past-service credit, discounted by the applicable actuarial factors to date of retirement.

(f) If any person becomes entitled to and participates in one of the retirement systems under this chapter through the consolidation or merger of governments or the transfer of functions between units of government, at the state or local level or between state and local units, or through the assumption of functions or activities by a state or local unit from an employing governmental entity that was not an employer under the system, and such person becomes a member of the Florida Retirement System, such person is entitled to receive past-service credit for the time the person performed services for, and was an employee of, such state or local unit or other governmental employing entity before the transfer, merger, consolidation, or assumption of functions and activities. Past-service credit allowed by this paragraph is also available to any person who becomes a member of an existing system before December 1, 1970, through the transfer, merger, consolidation, or assumption of functions and activities set forth in this paragraph and who subsequently becomes a member of the Florida Retirement System. However, credit for the past service may not be granted until contributions are made in the manner provided in this subsection. If a person rejected Florida Retirement System membership at the time of the transfer, merger, consolidation, or assumption of governmental functions and activities, the required contributions shall be at total actuarial cost as specified in paragraph (e). Such contributions or accrued interest may not be paid from any public funds.

(g) Any person who was enrolled on May 15, 1976, in a state retirement system administered under this

chapter and who was, on that date, an officer or employee of a consolidated government which by virtue of its charter had elected status as a municipality for purposes of state retirement systems administered under this chapter and who had not withdrawn his or her contributions shall be deemed to have become a member of that system as of the date he or she began to participate therein, whether employed by the consolidated government or a preceding interim government on that date, and shall be entitled to retain membership in that system so long as he or she continues to be an officer or employee of the consolidated government, regardless of the fact that the consolidated government and interim government were not employers as defined in s. 121.021(10). Any person who was enrolled before May 15, 1976, in a state retirement system administered under this chapter and who was, during the period of enrollment, an officer or employee of a consolidated government which by virtue of its charter had elected status as a municipality for purposes of state retirement systems administered under this chapter, who terminated employment with the consolidated government, and who had not withdrawn his or her contributions shall be deemed to have been a member of the retirement system in which he or she was enrolled during the period of such enrollment and employment by that consolidated government and during any period of enrollment and employment by any interim government which performed the functions of the consolidated government prior to its creation, regardless of the fact that the consolidated government and interim government were not employers as defined in s. 121.021(10). However, in no event shall credit be granted for service rendered in such employment prior to May 15, 1976, unless the contributions required for such credit were paid prior to May 15, 1976.

(h) The following provisions apply to the purchase of past service:

1. Notwithstanding any of the provisions of this subsection, past-service credit may not be purchased under this chapter for any service that is used to obtain a pension or benefit from a local retirement system. Eligibility to receive or the receipt of contributions to a retirement plan made by the employer on behalf of the employee is considered a benefit.

2. A member may not receive past service credit under paragraphs (a), (b), (e), or (f) for any leaves of absence without pay, except that credit for active military service leaves of absence may be claimed under paragraphs (a), (b), and (f), in accordance with s. 121.111(1).

3. A member may not receive past service credit for coemployer service. Coemployer service or a coemployer relationship is employment in a single position simultaneously covered and reported by both a public employer and a private employer.

4. If a member does not want to receive credit for all of his or her past service, the period the member claims must be the most recent past service prior to his or her participation in the Florida Retirement System.

5. The cost of past service purchased by an employing agency for its employees may be amortized over the period of time provided in the agreement, but



not to exceed 15 years, calculated in accordance with rule 60S-1.007(5)(f), Florida Administrative Code.

6. The retirement account of each member for whom past service is being provided by his or her employer shall be credited with all past service the employer agrees to purchase as soon as the agreement between the employer and the department is executed.

a. Each member's account shall also be posted with the total contribution his or her employer agrees to make on the member's behalf for past service earned before October 1, 1975, excluding those contributions representing the employer's matching share and the compound interest calculation on the total contribution. However, a portion of any contributions paid by an employer for past service credit earned on and after October 1, 1975, may not be posted to the member's account.

b. A refund of contributions payable after an employer has made a written agreement to purchase past service for employees of the covered group includes contributions for past service which are posted to the member's account. However, contributions for past service earned on and after October 1, 1975, are not refundable.

(i) An employee of a state agency who was a member of a state-administered retirement system and who was granted educational leave with pay pursuant to a written educational leave-with-pay policy may claim such period of educational leave as past service subject to the following conditions:

1. The educational leave must have occurred prior to December 31, 1971;

2. The member must have completed at least 6 years of creditable service excluding the period of the educational leave;

3. The employee must have returned to employment with a state agency employer who participated in the retirement system, which return was immediately upon termination of the educational leave, and must have remained on the employer's payroll for at least 1 calendar month following the return to employment;

4. The employee must be a member of the Florida Retirement System at the time he or she claims such service;

5. Not more than 24 months of creditable service may be claimed for such period of educational leave with pay;

6. The service must not be claimed under any other state or federal retirement system; and

7. The member must pay to the retirement trust fund for claiming such past-service credit an amount equal to 8 percent of his or her gross annual salary immediately prior to the educational leave with pay for each year of past service claimed, plus 4-percent interest thereon compounded annually each June 30 from the first year of service claimed until July 1, 1975, and 6.5-percent interest thereafter on the unpaid balance compounded annually each June 30 until paid.

(j) A member may claim and receive past-service credit under this system for employment in a multiple offender project funded by a grant from the Federal Government to a local government, which local government is not covered by this chapter, if the project was

implemented by a state attorney who had the authority for hiring and firing the employees of the project and the member worked under the supervision of the state attorney or his or her subordinate. Creditable service shall be granted upon certification by the state attorney of the preceding conditions and payment by the member or the state attorney's office of the amount due for the period of employment, based on the contribution rates in effect for regular or special risk members, as appropriate, at the time such service is claimed, plus interest compounded annually each June 30 at the rate of 4 percent until July 1, 1975, and 6.5 percent thereafter. Such creditable service shall not be available to any member who receives a benefit from another state or local retirement system which is derived in whole or in part from the same service.

(k) Employees of the Fourth Judicial Circuit who were in an employee-employer relationship with the City of Jacksonville on June 30, 2004, and who became employees of the State Courts System on July 1, 2004, as a result of implementation of Revision 7 to Article V of the State Constitution shall be deemed to be included in past service as defined in s. 121.021(18), for the purposes of the Florida Retirement System, any other provisions of law notwithstanding. If credit for such service has not been granted under any other retirement system, any member of the Florida Retirement System therein shall be entitled to receive past-service credit for his or her period of employment with the City of Jacksonville prior to July 1, 2004, in the manner provided in this subsection. However, in no event will eligibility for past service be established unless required contributions are paid into the Florida Retirement System for such period of past service, and such contributions may be paid by the member or prior employer on behalf of the member.

(2) Prior service, as defined in s. 121.021, may be claimed as creditable service under the Florida Retirement System after a member has been reemployed for 1 complete year of creditable service, except as provided in paragraph (c). Service performed as a member of the optional retirement program for the State University System under s. 121.35 or the Senior Management Service Optional Annuity Program under s. 121.055 may be used to satisfy the reemployment requirement of 1 complete year of creditable service. The member shall not be permitted to make any contributions for prior service until after completion of the 1 year of creditable service. If a member does not wish to claim credit for all of his or her prior service, the service the member claims must be the most recent period of service. The required contributions for claiming the various types of prior service are:

(a) For prior service performed before the date the system becomes noncontributory for the member and for which the member had credit under one of the existing retirement systems and received a refund of contributions upon termination of employment, the member shall contribute 4 percent of all salary received during the period being claimed, plus 4 percent interest compounded annually from date of refund until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until full payment is made to the Florida

Retirement System Trust Fund, and receive credit in the Regular Class. A member who elected to transfer to the Florida Retirement System from an existing system may receive credit for prior service under the existing system if he or she was eligible under the existing system to claim the prior service at the time of the transfer. Contributions for such prior service shall be determined by the applicable provisions of the system under which the prior service is claimed and shall be paid by the member, with matching contributions paid by the employer at the time the service was performed. Effective July 1, 1978, the account of a person who terminated under s. 238.05(3) may not be charged interest for contributions that remained on deposit in the Annuity Savings Trust Fund established under chapter 238, upon retirement under this chapter or chapter 238.

(b) For prior service performed before the date the system becomes noncontributory for the member and for which the member had credit under the Florida Retirement System and received a refund of contributions upon termination of employment, the member shall contribute at the rate that was required of him or her during the period of service being claimed, on all salary received during such period, plus 4 percent interest compounded annually from date of refund until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until the full payment is made to the Florida Retirement System Trust Fund, and receive credit in the membership class in which the member participated during the period claimed.

(c) For prior service as defined in s. 121.021(19)(b) and (c) during which no contributions were made because the member did not participate in a retirement system, the member shall contribute 14.38 percent of all salary received during such period or 14.38 percent of \$100 per month during such period, whichever is greater, plus 4 percent interest compounded annually from the first year of service claimed until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until full payment is made to the Retirement Trust Fund, and shall receive credit in the Regular Class.

(d) In order to claim credit for prior service as defined in s. 121.021(19)(d) for which no retirement contributions were paid during the period of such service, the member shall contribute the total employee and employer contributions which were required to be made to the Highway Patrol Pension Trust Fund, as provided in chapter 321, during the period claimed, plus 4 percent interest compounded annually from the first year of service until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until full payment is made to the Retirement Trust Fund. However, any governmental entity that employed such member may elect to pay up to 50 percent of the contributions and interest required to purchase the prior service credit. The service shall be credited in accordance with the Highway Patrol Pension Plan in effect during the period claimed unless the member terminated and withdrew his or her retirement contributions and was thereafter enrolled in the State and County Officers and Employees' Retirement System or the Florida Retirement System, in which case the service shall be credited as Regular Class service.

(e) For service performed under the Florida Retirement System after December 1, 1970, which was never reported to the division or the department due to error, retirement credit may be claimed by a member of the Florida Retirement System. The department shall adopt rules establishing criteria for claiming such credit and detailing the documentation required to substantiate the error.

(f) For prior service performed on or after July 1, 2011, for which the member had credit under the Florida Retirement System and received a refund of contributions 3 calendar months after termination of employment, the member shall contribute at the rate that was required during the period of service being claimed, plus 6.5 percent interest, compounded annually on each June 30 from date of refund until the full payment is made to the Florida Retirement System Trust Fund, and receive credit in the membership class in which the member participated during the period claimed.

(g) The employer may not be required to make contributions for prior service credit for any member, except that the employer shall pay the employer portion of contributions for any legislator who elects to withdraw from the Florida Retirement System and later rejoins the system and pays any employee contributions required in accordance with s. 121.052(3)(d).

**History.**—s. 8, ch. 70-112; s. 27, ch. 71-355; s. 1, ch. 72-168; s. 1, ch. 74-158; s. 5, ch. 74-302; s. 1, ch. 75-260; s. 2, ch. 76-226; s. 3, ch. 77-469; s. 5, ch. 79-377; s. 7, ch. 80-242; s. 2, ch. 80-243; s. 4, ch. 81-214; s. 9, ch. 84-266; s. 5, ch. 85-246; s. 12, ch. 88-382; s. 6, ch. 92-122; s. 772, ch. 95-147; s. 8, ch. 98-138; s. 36, ch. 99-255; s. 10, ch. 99-392; s. 9, ch. 2000-169; s. 5, ch. 2000-347; s. 8, ch. 2004-347; s. 10, ch. 2007-196; s. 8, ch. 2009-209; s. 14, ch. 2010-5; s. 14, ch. 2011-68.

**121.085 Creditable service.**—The following provision shall apply to creditable service as defined in s. 121.021(17): no creditable service which remained unclaimed at retirement may be claimed or purchased after a retirement benefit payment has been cashed or deposited.

**History.**—s. 6, ch. 2000-347; s. 36, ch. 2012-116; s. 16, ch. 2013-15.

**121.091 Benefits payable under the system.**—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(1) **NORMAL RETIREMENT BENEFIT.**—Upon attaining his or her normal retirement date, the member, upon application to the administrator, shall receive a monthly benefit which shall begin to accrue on the first day of the month of retirement and be payable on the last day of that month and each month thereafter during his or her lifetime. The normal retirement benefit, including any past or additional retirement credit, may not exceed 100 percent of the average final

compensation. The amount of monthly benefit shall be calculated as the product of A and B, subject to the adjustment of C, if applicable, as set forth below:

(a)1. For creditable years of Regular Class service, A is 1.60 percent of the member's average final compensation, up to the member's normal retirement date. Upon completion of the first year after the normal retirement date, A is 1.63 percent of the member's average final compensation. Following the second year after the normal retirement date, A is 1.65 percent of the member's average final compensation. Following the third year after the normal retirement date, and for subsequent years, A is 1.68 percent of the member's average final compensation.

2. For creditable years of special risk service, A is:

a. Two percent of the member's average final compensation for all creditable years prior to October 1, 1974;

b. Three percent of the member's average final compensation for all creditable years after September 30, 1974, and before October 1, 1978;

c. Two percent of the member's average final compensation for all creditable years after September 30, 1978, and before January 1, 1989;

d. Two and two-tenths percent of the member's final monthly compensation for all creditable years after December 31, 1988, and before January 1, 1990;

e. Two and four-tenths percent of the member's average final compensation for all creditable years after December 31, 1989, and before January 1, 1991;

f. Two and six-tenths percent of the member's average final compensation for all creditable years after December 31, 1990, and before January 1, 1992;

g. Two and eight-tenths percent of the member's average final compensation for all creditable years after December 31, 1991, and before January 1, 1993;

h. Three percent of the member's average final compensation for all creditable years after December 31, 1992; and

i. Three percent of the member's average final compensation for all creditable years of service after September 30, 1978, and before January 1, 1993, for any special risk member who retires after July 1, 2000, or any member of the Special Risk Administrative Support Class entitled to retain the special risk normal retirement date who was a member of the Special Risk Class during the time period and who retires after July 1, 2000.

3. For creditable years of Senior Management Service Class service after January 31, 1987, A is 2 percent;

4. For creditable years of Elected Officers' Class service as a Supreme Court Justice, district court of appeal judge, circuit judge, or county court judge, A is  $3\frac{1}{3}$  percent of the member's average final compensation, and for all other creditable service in such class, A is 3 percent of average final compensation;

(b) B is the number of the member's years and any fractional part of a year of creditable service earned subsequent to November 30, 1970; and

(c) C is the normal retirement benefit credit brought forward as of November 30, 1970, by a former member of an existing system. Such normal retirement benefit

credit shall be determined as the product of X and Y when X is the percentage of average final compensation which the member would have been eligible to receive if the member had attained his or her normal retirement date as of November 30, 1970, all in accordance with the existing system under which the member is covered on November 30, 1970, and Y is average final compensation as defined in s. 121.021(24). However, any member of an existing retirement system who is eligible to retire and who does retire, become disabled, or die prior to April 15, 1971, may have his or her retirement benefits calculated on the basis of the best 5 of the last 10 years of service.

(d) A member's average final compensation shall be determined by formula to obtain the coverage for the 5 highest fiscal years' salaries, calculated as provided by rule.

(2) **BENEFITS PAYABLE FOR DUAL NORMAL RETIREMENT AGES.**—If a member accumulates retirement benefits to commence at different normal retirement ages by virtue of having performed duties for an employer which would entitle him or her to benefits as both a member of the Special Risk Class and a member of either the Regular Class, Senior Management Service Class, or Elected Officers' Class, the amount of benefits payable shall be computed separately with respect to each such age and the sum of such computed amounts shall be paid as provided in this section.

(3) **EARLY RETIREMENT BENEFIT.**—Upon retirement on his or her early retirement date, the member shall receive an immediate monthly benefit that shall begin to accrue on the first day of the month of the retirement date and be payable on the last day of that month and each month thereafter during his or her lifetime. Such benefit shall be calculated as follows:

(a) For a member initially enrolled:

1. Before July 1, 2011, the amount of each monthly payment shall be computed in the same manner as for a normal retirement benefit, in accordance with subsection (1), but shall be based on the member's average monthly compensation and creditable service as of the member's early retirement date. The benefit so computed shall be reduced by five-twelfths of 1 percent for each complete month by which the early retirement date precedes the normal retirement date of age 62 for a member of the Regular Class, Senior Management Service Class, or the Elected Officers' Class, and age 55 for a member of the Special Risk Class, or age 52 if a Special Risk member has completed 25 years of creditable service in accordance with s. 121.021(29)(b)1.c.

2. On or after July 1, 2011, the amount of each monthly payment shall be computed in the same manner as for a normal retirement benefit, in accordance with subsection (1), but shall be based on the member's average monthly compensation and creditable service as of the member's early retirement date. The benefit so computed shall be reduced by five-twelfths of 1 percent for each complete month by which the early retirement date precedes the normal retirement date of age 65 for a member of the Regular Class, Senior Management Service Class, or the Elected

Officers' Class, and age 60 for a member of the Special Risk Class, or age 57 if a special risk member has completed 30 years of creditable service in accordance with s. 121.021(29)(b)2.c.

(b) If the employment of a member is terminated by reason of death within 10 years before normal retirement as described in s. 121.021(29)(a)1.b. or s. 121.021(29)(a)2.b., the monthly benefit payable to the member's beneficiary shall be calculated in accordance with subsection (1), but must be based on average monthly compensation and creditable service as of the date of death. The benefit so computed shall be reduced by five-twelfths of 1 percent for each complete month by which death precedes the normal retirement date specified above or the date on which the member would have attained the normal retirement date had he or she survived and continued his or her employment, whichever provides a higher benefit.

(4) **DISABILITY RETIREMENT BENEFIT.—**

(a) *Disability retirement; entitlement and effective date.—*

1.a. A member who becomes totally and permanently disabled, as defined in paragraph (b), after completing 5 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit; except that any member with less than 5 years of creditable service on July 1, 1980, or any person who becomes a member of the Florida Retirement System on or after such date must have completed 10 years of creditable service before becoming totally and permanently disabled in order to receive disability retirement benefits for any disability which occurs other than in the line of duty. However, if a member employed on July 1, 1980, who has less than 5 years of creditable service as of that date becomes totally and permanently disabled after completing 5 years of creditable service and is found not to have attained fully insured status for benefits under the federal Social Security Act, such member is entitled to a monthly disability benefit.

b. Effective July 1, 2001, a member of the pension plan who becomes totally and permanently disabled, as defined in paragraph (b), after completing 8 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit.

2. If the division has received from the employer the required documentation of the member's termination of employment, the effective retirement date for a member who applies and is approved for disability retirement shall be established by rule of the division.

3. For a member who is receiving Workers' Compensation payments, the effective disability retirement date may not precede the date the member reaches Maximum Medical Improvement (MMI), unless the member terminates employment before reaching MMI.

(b) *Total and permanent disability.—*A member shall be considered totally and permanently disabled if, in the opinion of the administrator, he or she is prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee.

(c) *Proof of disability.—*The administrator, before approving payment of any disability retirement benefit, shall require proof that the member is totally and permanently disabled as provided herein:

1. Such proof shall include the certification of the member's total and permanent disability by two licensed physicians of the state and such other evidence of disability as the administrator may require, including reports from vocational rehabilitation, evaluation, or testing specialists who have evaluated the applicant for employment. A member whose position with an employer requires that the member work full time outside this state in the United States may include certification by two licensed physicians of the state where the member works. A member who is receiving care at a federal Veterans Health Administration facility may include certification by two licensed physicians working at the facility.

2. It must be documented that:

a. The member's medical condition occurred or became symptomatic during the time the member was employed in an employee/employer relationship with his or her employer;

b. The member was totally and permanently disabled at the time he or she terminated covered employment; and

c. The member has not been employed with any other employer after such termination.

3. If the application is for in-line-of-duty disability, in addition to the requirements of subparagraph 2., it must be documented by competent medical evidence that the disability was caused by a job-related illness or accident which occurred while the member was in an employee/employer relationship with his or her employer.

4. The unavailability of an employment position that the member is physically and mentally capable of performing will not be considered as proof of total and permanent disability.

(d) *Election on appeal.—*A member whose application for regular disability retirement has been denied and who has filed an appeal to the State Retirement Commission may, if eligible, elect to receive normal or early service retirement benefits while he or she is awaiting the decision on the appeal. However:

1. If the member elects to receive service retirement benefits and disability benefits are later approved as a result of the appeal, the payment option chosen by the member may not be changed.

2. If the member elects to receive early service retirement and the appeal is later denied, the member may not change his or her election of early retirement.

Before such regular or early retirement benefits may be paid by the division, the member must provide to the division a written statement indicating that the member understands that such changes are not permitted after he or she begins receiving the benefits.

(e) *Disability retirement benefit.—*Upon the retirement of a member on his or her disability retirement date, the member shall receive a monthly benefit that shall begin to accrue on the first day of the month of disability retirement and shall be payable on the last day

of that month and each month thereafter during his or her lifetime and continued disability.

(f) *Computation of disability retirement benefit.*—The amount of each monthly payment shall be computed in the same manner as for a normal retirement benefit, in accordance with subsection (1), but shall be based on disability option actuarial equivalency tables and the average monthly compensation and creditable service of the member as of the disability retirement date, subject to the following conditions:

1. If the member's disability occurred in the line of duty, the monthly Option 1 benefit shall not be less than:

a. Forty-two percent of average monthly compensation as of the disability retirement date; or

b. Sixty-five percent of the average monthly compensation as of the disability retirement date for a member of the special risk class who retires on or after July 1, 2000; or

2. If the member's disability occurred other than in the line of duty, the monthly Option 1 benefit shall not be less than 25 percent of average monthly compensation as of the disability retirement date.

(g) *Reapplication.*—A member, whose initial application for disability retirement has been denied, may reapply for disability benefits. However, such member's reapplication will be considered only if the member presents new medical evidence of a medical condition that existed prior to the member's termination of employment. The division may prescribe by rule procedures for reapplication and for review and approval or disapproval of reapplication.

(h) *Recovery from disability.*—The administrator may require periodic reexaminations at the expense of the retirement fund. The division may adopt rules establishing procedures for conducting and review of such reexaminations.

1. If the administrator finds that a member who is receiving disability benefits is, at any time prior to his or her normal retirement date, no longer disabled, the administrator shall direct that the benefits be discontinued. The decision of the administrator on this question shall be final and binding. If such member:

a. Does not reenter the employ of an employer and was not vested as of the disability retirement date, he or she shall be entitled to the excess, if any, of his or her accumulated contributions over the total disability benefits received up to the date of recovery.

b. Does not reenter the employ of an employer, but was vested as of the disability retirement date, he or she may elect to receive:

(I) The excess, if any, of his or her accumulated contributions over the total disability benefits received up to the date of recovery; or

(II) A deferred benefit commencing on the last day of the month of the normal retirement date which shall be payable on the last day of the month thereafter during his or her lifetime. The amount of such monthly benefit shall be computed in the same manner as for a normal retirement benefit, in accordance with subsection (1), but shall be based on average monthly compensation and creditable service as of the member's disability retirement date.

c. Reenters employment of an employer within 6 months after recovery, the member's service will be deemed to have been continuous, but the period beginning with the first month for which he or she received a disability benefit payment and ending with the date he or she reentered employment will not be considered as creditable service for the purpose of computing benefits except as provided in sub-subparagraph d. As used in this section, the term "accumulated contributions" for such member means the excess of the member's accumulated contributions as of the disability retirement date over the total disability benefits received under paragraph (e).

d. Terminates his or her disability benefit, reenters covered employment, and is continuously employed for a minimum of 1 year of creditable service, he or she may claim as creditable service the months during which he or she was receiving a disability benefit, upon payment of the required contributions. Contributions shall equal the total required employee and employer contribution rate applicable during the period the retiree received retirement benefits, multiplied times his or her rate of monthly compensation prior to the commencement of disability retirement for each month of the period claimed, plus 4 percent interest until July 1, 1975, and 6.5 percent interest thereafter, compounded annually each June 30 to the date of payment. If the member does not claim credit for all of the months he or she received disability benefits, the months claimed must be the most recent months of retirement. Such credit for periods of disability, when purchased under the Florida Retirement System, shall apply toward vesting requirements for eligibility to purchase additional credit for other service.

2. Both the member receiving disability benefits who reenters employment and the employer employing such disability retiree shall notify the division immediately upon reemployment, and the division shall terminate such member's disability benefits, effective the first day of the month following the month in which notification of recovery is received. If the member is reemployed with a Florida Retirement System employer at the time of benefit termination, and he or she has received disability retirement benefit and salary payments concurrently prior to notifying the division, he or she may elect within 30 days to:

a. Retain the retirement benefits received prior to termination of disability benefits and begin receiving retirement service credit effective upon the date of termination of benefits; or

b. Repay, within 12 months after his or her decision to receive service credit, the retirement benefits received for each month of reemployment prior to termination of disability benefits and begin receiving retirement service credit effective upon the date of reemployment. Any such unpaid benefits shall have compound interest of 6.5 percent added June 30.

A member may not receive both retirement service credit for employment and retirement benefits for the same month.

3. If, after recovery of disability and reentry into covered employment, the member again becomes

disabled and is again approved for disability retirement, the Option 1 monthly retirement benefit shall not be less than the Option 1 monthly benefit calculated at the time of the previous disability, plus any cost of living increases up to the time the disability benefit was terminated upon his or her reentry into covered employment.

(i) *Nonadmissible causes of disability.*—A member shall not be entitled to receive any disability retirement benefit if the disability is a result of any of the following:

1. Injury or disease sustained by the member while willfully participating in a riot, civil insurrection, or other act of violence or while committing a felony;

2. Injury or disease sustained by the member after his or her employment has terminated; or

3. Intentional, self-inflicted injury.

(j) *Disability retirement of justice or judge by order of Supreme Court.*—

1. If a member is a justice of the Supreme Court, judge of a district court of appeal, circuit judge, or judge of a county court who has served for the number of years equal to, or greater than, the vesting requirement in s. 121.021(45) as an elected constitutional judicial officer, including service as a judicial officer, in any court abolished pursuant to Art. V of the State Constitution, and who is retired for disability by order of the Supreme Court upon recommendation of the Judicial Qualifications Commission pursuant to Art. V of the State Constitution, the member's Option 1 monthly benefit as provided in subparagraph (6)(a)1. may not be less than two-thirds of his or her monthly compensation as of the member's disability retirement date. Such member may alternatively elect to receive a disability retirement benefit under any other option as provided in paragraph (6)(a).

2. Should any justice or judge who is a member of the Florida Retirement System be retired for disability by order of the Supreme Court upon recommendation of the Judicial Qualifications Commission pursuant to Art. V of the State Constitution, then all contributions to his or her account and all contributions made on his or her behalf by the employer shall be transferred to and deposited in the General Revenue Fund of the state, and there is hereby appropriated annually out of the General Revenue Fund, to be paid into the Florida Retirement System Fund, an amount necessary to pay the benefits of all justices and judges retired from the Florida Retirement System pursuant to Art. V of the State Constitution.

(5) **TERMINATION BENEFITS.**—A member whose employment is terminated prior to retirement retains membership rights to previously earned member-non-contributory service credit, and to member-contributory service credit, if the member leaves the member contributions on deposit in his or her retirement account. If a terminated member receives a refund of member contributions, such member may reinstate membership rights to the previously earned service credit represented by the refund by completing 1 year of creditable service and repaying the refunded member contributions, plus interest.

(a) A member whose employment is terminated for any reason other than death or retirement before

becoming vested is entitled to the return of his or her accumulated contributions as of the date of termination. Effective July 1, 2011, upon termination of employment from all participating employers for 3 calendar months as defined in s. 121.021(39)(c) for any reason other than retirement, a member may receive a refund of all contributions he or she has made to the pension plan, subject to the restrictions otherwise provided in this chapter. The refund may be received as a lump-sum payment, a rollover to a qualified plan, or a combination of these methods. Partial refunds are not permitted. The refund may not include any interest earnings on the contributions for a member of the pension plan. Employer contributions made on behalf of the member are not refundable. A member may not receive a refund of employee contributions if a pending or an approved qualified domestic relations order is filed against his or her retirement account. By obtaining a refund of contributions, a member waives all rights under the Florida Retirement System and the health insurance subsidy to the service credit represented by the refunded contributions, except the right to purchase his or her prior service credit in accordance with s. 121.081(2).

(b) A member whose employment is terminated for any reason other than death or retirement after becoming vested may elect to receive a deferred monthly benefit which shall begin to accrue on the first day of the month of normal or early retirement and shall be payable on the last day of that month and each month thereafter during his or her lifetime. The amount of monthly benefit shall be computed in the same manner as for a normal retirement benefit in accordance with subsection (1) or early retirement benefit in accordance with s. 121.021(30), but based on average monthly compensation and creditable service as of the date of termination.

(c) In lieu of the deferred monthly benefit provided in paragraph (b), the terminated member may elect to receive a lump-sum amount equal to his or her accumulated contributions as of the date of termination. Effective July 1, 2011, upon termination of employment from all participating employers for 3 calendar months as defined in s. 121.021(39)(c) for any reason other than retirement, a member may receive a refund of all contributions he or she has made to the pension plan, subject to the restrictions otherwise provided in this chapter. Partial refunds are not permitted. The refund may not include any interest earnings on the contributions for a member of the pension plan. Employer contributions made on behalf of the member are not refundable. A member may not receive a refund of employee contributions if a pending or an approved qualified domestic relations order is filed against his or her retirement account. By obtaining a refund of contributions, a member waives all rights under the Florida Retirement System and the health insurance subsidy to the service credit represented by the refunded contributions, except the right to purchase his or her prior service credit in accordance with s. 121.081(2).

(d) If any retired member dies without having received in benefit payments an amount equal to his

or her accumulated contributions, there shall be payable to his or her designated beneficiary an amount equal to the excess, if any, of the member's accumulated contributions over the total monthly payments made to the member prior to the date of death.

(e) A member shall be deemed a terminated member when termination of employment has occurred as provided in s. 121.021(39).

(f) Any member who has been found guilty by a verdict of a jury, or by the court trying the case without a jury, of committing, aiding, or abetting any embezzlement or theft from his or her employer, bribery in connection with the employment, or other felony specified in chapter 838, except ss. 838.15 and 838.16, committed prior to retirement, or who has entered a plea of guilty or of nolo contendere to such crime, or any member whose employment is terminated by reason of the member's admitted commitment, aiding, or abetting of an embezzlement or theft from his or her employer, bribery, or other felony specified in chapter 838, except ss. 838.15 and 838.16, shall forfeit all rights and benefits under this chapter, except the return of his or her accumulated contributions as of the date of termination.

(g) Any elected official who is convicted by the Senate of an impeachable offense shall forfeit all rights and benefits under this chapter, except the return of his or her accumulated contributions as of the date of the conviction.

(h) Any member who, prior to retirement, is adjudged by a court of competent jurisdiction to have violated any state law against strikes by public employees, or who has been found guilty by such court of violating any state law prohibiting strikes by public employees, shall forfeit all rights and benefits under this chapter, except the return of his or her accumulated contributions as of the date of the conviction.

(i) The division may not pay benefits to any member convicted of a felony committed on or after October 1, 2008, defined in s. 800.04 against a victim younger than 16 years of age, or defined in chapter 794 against a victim younger than 18 years of age, through the use or attempted use of power, rights, privileges, duties, or position of the member's public office or employment position. However, the division shall return the member's accumulated contributions, if any, that the member accumulated as of the date of conviction.

(j) Any beneficiary who by a verdict of a jury or by the court trying the case without a jury is found guilty, or who has entered a plea of guilty or nolo contendere, of unlawfully and intentionally killing or procuring the death of the member forfeits all rights to the deceased member's benefits under this chapter, and the benefits will be paid as if such beneficiary had predeceased the decedent.

(k) Benefits shall not be paid by the division pending final resolution of such charges against a member or beneficiary if the resolution of such charges could require the forfeiture of benefits as provided in paragraph (f), paragraph (g), paragraph (h), paragraph (i), or paragraph (j).

(6) OPTIONAL FORMS OF RETIREMENT BENEFITS AND DISABILITY RETIREMENT BENEFITS.—

(a) Prior to the receipt of the first monthly retirement payment, a member shall elect to receive the retirement benefits to which he or she is entitled under subsection (1), subsection (2), subsection (3), or subsection (4) in accordance with one of the following options:

1. The maximum retirement benefit payable to the member during his or her lifetime.

2. A decreased retirement benefit payable to the member during his or her lifetime and, in the event of his or her death within a period of 10 years after retirement, the same monthly amount payable for the balance of such 10-year period to his or her beneficiary or, in case the beneficiary is deceased, in accordance with subsection (8) as though no beneficiary had been named.

3. A decreased retirement benefit payable during the joint lifetime of both the member and his or her joint annuitant and which, after the death of either, shall continue during the lifetime of the survivor in the same amount, subject to the provisions of subsection (12).

4. A decreased retirement benefit payable during the joint lifetime of the member and his or her joint annuitant and which, after the death of either, shall continue during the lifetime of the survivor in an amount equal to 66⅔ percent of the amount that was payable during the joint lifetime of the member and his or her joint annuitant, subject to the provisions of subsection (12).

The spouse of any member who elects to receive the benefit provided under subparagraph 1. or subparagraph 2. shall be notified of and shall acknowledge any such election. The division shall establish by rule a method for selecting the appropriate actuarial factor for optional forms of benefits selected under subparagraphs 3. and 4., based on the age of the member and the joint annuitant.

(b) The benefit payable under any option stated above shall be the actuarial equivalent, based on tables adopted by the administrator for this purpose, of the amount to which the member was otherwise entitled.

(c) A member who elects the option in subparagraph (a)2. shall, in accordance with subsection (8), designate one or more persons to receive the benefits payable in the event of his or her death. Such persons shall be the beneficiaries of the member. The member may also designate one or more contingent beneficiaries to receive any benefits remaining upon the death of the primary beneficiary.

(d) A member who elects the option in subparagraph (a)3. or subparagraph (a)4. shall, on a form provided for that purpose, designate a joint annuitant to receive the benefits which continue to be payable upon the death of the member. After benefits have commenced under the option in subparagraph (a)3. or subparagraph (a)4., the following shall apply:

1. A retired member may change his or her designation of a joint annuitant only twice. If such a retired member desires to change his or her designation of a joint annuitant, he or she shall file with the division a notarized "change of joint annuitant" form and shall notify the former joint annuitant in writing of such change. Effective the first day of the next month following receipt by the division of a completed change

of joint annuitant form, the division shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit. The consent of a retired member's first designated joint annuitant to any such change shall not be required. However, if either the member or the joint annuitant dies before the effective date of the request for change of joint annuitant, the requested change shall be void, and survivor benefits, if any, shall be paid as if no request had been made.

2. In the event of the dissolution of marriage of a retired member and a joint annuitant, such member may make an election to nullify the joint annuitant designation of the former spouse, unless there is an existing qualified domestic relations order preventing such action. The member shall file with the division a written, notarized nullification which shall be effective on the first day of the next month following receipt by the division. Benefits shall be paid as if the former spouse predeceased the member. A member who makes such an election may not reverse the nullification but may designate a new joint annuitant in accordance with subparagraph 1.

(e) The election of an option shall be null and void if the member dies before the effective date of retirement.

(f) A member who elects to receive benefits under the option in subparagraph (a)3. may designate one or more qualified persons, either a spouse or other dependent, as his or her joint annuitant to receive the benefits after the member's death in whatever proportion he or she so assigns to each person named as joint annuitant. The division shall adopt appropriate actuarial tables and calculations necessary to ensure that the benefit paid is the actuarial equivalent of the benefit to which the member is otherwise entitled under the option in subparagraph (a)1.

(g) Upon the death of a retired member or beneficiary receiving monthly benefits under this chapter, the monthly benefits shall be paid through the last day of the month of death and shall terminate, or be adjusted, if applicable, as of that date in accordance with the optional form of benefit selected at the time of retirement.

(h) The option selected or determined for payment of benefits as provided in this section shall be final and irrevocable at the time a benefit payment is cashed or deposited or credited to the Deferred Retirement Option Program as provided in subsection (13).

**(7) DEATH BENEFITS.—**

(a) If the employment of a member is terminated by reason of his or her death prior to being vested, except as provided in paragraph (f), there shall be payable to his or her designated beneficiary the member's accumulated contributions.

(b) If the employment of an active member who may or may not have applied for retirement is terminated by reason of his or her death subsequent to becoming vested and prior to his or her effective date of retirement, if established, it shall be assumed that the member retired as of the date of death in accordance with subsection (1) if eligible for normal retirement benefits, subsection (2) if eligible for benefits payable

for dual normal retirement, or subsection (3) if eligible for early retirement benefits. Benefits payable to the designated beneficiary shall be as follows:

1. For a beneficiary who qualifies as a joint annuitant, the optional form of payment provided in accordance with subparagraph (6)(a)3. shall be paid for the joint annuitant's lifetime.

2. For a beneficiary who does not qualify as a joint annuitant, no continuing monthly benefit shall be paid and the beneficiary shall be entitled only to the return of the member's personal contributions. If there is no monetary interest in the member's retirement account for which such beneficiary is eligible, the beneficiary shall be the next named beneficiary or, if no other beneficiary is named, the beneficiary shall be the next eligible beneficiary according to subsection (8).

(c) If a retiring member dies on or after the effective date of retirement, but prior to a benefit payment being cashed or deposited, or credited to the Deferred Retirement Option Program, benefits shall be paid as follows:

1. For a designated beneficiary who qualifies as a joint annuitant, benefits shall be paid in the optional form of payment provided in subparagraph (6)(a)3. for the joint annuitant's lifetime or, if the member chose the optional form of payment provided in subparagraph (6)(a)2., the joint annuitant may select the form provided in either subparagraph (6)(a)2. or subparagraph (6)(a)3.

2. For a designated beneficiary who does not qualify as a joint annuitant, any benefits payable shall be paid as provided in the option selected by the member; or if the member has not selected an option, benefits shall be paid in the optional form of payment provided in subparagraph (6)(a)1.

(d) Notwithstanding any other provision in this chapter to the contrary, with the exception of the Deferred Retirement Option Program, as provided in subsection (13):

1. The surviving spouse of any member killed in the line of duty may receive a monthly pension equal to one-half of the monthly salary being received by the member at the time of death for the rest of the surviving spouse's lifetime or, if the member was vested, such surviving spouse may elect to receive a benefit as provided in paragraph (b). Benefits provided by this paragraph shall supersede any other distribution that may have been provided by the member's designation of beneficiary.

2. If the surviving spouse of a member killed in the line of duty dies, the monthly payments that would have been payable to such surviving spouse had such surviving spouse lived shall be paid for the use and benefit of such member's child or children under 18 years of age and unmarried until the 18th birthday of the member's youngest child. Beginning July 1, 2016, such payments may be extended, for the surviving child of a member in the Special Risk Class at the time he or she was killed in the line of duty on or after July 1, 2013, until the 25th birthday of any child of the member if the child is unmarried and enrolled as a full-time student. Beginning July 1, 2017, such payments may be extended, for the surviving child of a member in the Special Risk Class at the time he or she was killed in the line of duty on or after July 1, 2002, until the 25th



birthday of any child of the member if the child is unmarried and enrolled as a full-time student.

3. If a member killed in the line of duty leaves no surviving spouse but is survived by a child or children under 18 years of age, the benefits provided by subparagraph 1., normally payable to a surviving spouse, shall be paid for the use and benefit of such member's child or children under 18 years of age and unmarried until the 18th birthday of the member's youngest child. Beginning July 1, 2016, such monthly payments may be extended, for the surviving child of a member in the Special Risk Class at the time he or she was killed in the line of duty on or after July 1, 2013, until the 25th birthday of any child of the member if the child is unmarried and enrolled as a full-time student. Beginning July 1, 2017, such monthly payments may be extended, for the surviving child of a member in the Special Risk Class at the time he or she was killed in the line of duty on or after July 1, 2002, until the 25th birthday of any child of the member if the child is unmarried and enrolled as a full-time student.

4. The surviving spouse of a member whose benefit terminated because of remarriage shall have the benefit reinstated beginning July 1, 1993, at an amount that would have been payable had the benefit not been terminated.

(e) The surviving spouse or other dependent of any member, except a member who participated in the Deferred Retirement Option Program, whose employment is terminated by death shall, upon application to the administrator, be permitted to pay the required contributions for any service performed by the member which could have been claimed by the member at the time of his or her death. Such service shall be added to the creditable service of the member and shall be used in the calculation of any benefits which may be payable to the surviving spouse or other surviving dependent.

(f) Notwithstanding any other provisions in this chapter to the contrary and upon application to the administrator, an eligible joint annuitant, of a member whose employment is terminated by death within 1 year of such member satisfying the service requirements for vesting and retirement eligibility, shall be permitted to purchase only the additional service credit necessary to vest and qualify for retirement benefits, not to exceed a total of 1 year of credit, by one or a combination of the following methods:

1. Such eligible joint annuitant may use the deceased member's accumulated hours of annual, sick, and compensatory leave to purchase additional creditable service, on an hour by hour basis, provided that such deceased member's accumulated leave is sufficient to cover the additional months required. For each month of service credit needed prior to the final month, credit for the total number of work hours in that month must be purchased, using an equal number of the deceased member's accumulated leave hours. Service credit required for the final month in which the deceased member would have become vested shall be awarded upon the purchase of 1 hour of credit. Such eligible joint annuitant shall pay the contribution rate in effect for the period of time being claimed for the deceased member's class of membership, multiplied by such member's

monthly salary at the time of death, plus 6.5 percent interest compounded annually. The accumulated leave payment used in the average final compensation shall not include that portion of the payment that represents any leave hours used in the purchase of such creditable service.

2. Such eligible joint annuitant may purchase additional months of creditable service for any periods of out-of-state service as provided in s. 121.1115, and in-state service as provided in s. 121.1122, that the deceased member would have been eligible to purchase prior to his or her death.

Service purchased under this paragraph shall be added to the creditable service of the member and used to vest for retirement eligibility, and shall be used in the calculation of any benefits which may be payable to the eligible joint annuitant. Any benefits paid in accordance with this paragraph shall only be made prospectively.

(g) Notwithstanding any other provisions in this chapter to the contrary, if any member who is vested dies and the surviving spouse receives a refund of the accumulated contributions made to the retirement trust fund, such spouse may pay to the Division of Retirement an amount equal to the sum of the amount of the deceased member's accumulated contributions previously refunded plus interest at 4 percent compounded annually each June 30 from the date of refund until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until full payment is made, and receive the monthly retirement benefit as provided in paragraph (b).

(h) The designated beneficiary who is the surviving spouse or other dependent of a member whose employment is terminated by death subsequent to becoming vested, but prior to actual retirement, may elect to receive a deferred monthly benefit as if the member had lived and had elected a deferred monthly benefit, as provided in paragraph (5)(b), calculated on the basis of the average final compensation and creditable service of the member at his or her death and the age the member would have attained on the commencement date of the deferred benefit elected by the beneficiary, paid in accordance with option 3 of paragraph (6)(a).

(i) Notwithstanding any provision in this chapter to the contrary, if a member in the Special Risk Class, other than a participant in the Deferred Retirement Option Program under subsection (13), is killed in the line of duty on or after July 1, 2002, the following benefits are payable in addition to the benefits provided in paragraph (d):

1. The surviving spouse may receive a monthly pension equal to one-half of the monthly salary being received by the member at the time of the member's death for the rest of the surviving spouse's lifetime or, if the member was vested, such surviving spouse may elect to receive a benefit as provided in paragraph (b). Benefits provided by this paragraph supersede any other distribution that may have been provided by the member's designation of beneficiary.

2. If the surviving spouse dies, the monthly payments that otherwise would have been payable to such

surviving spouse shall be paid for the use and benefit of the member's child or children under 18 years of age and unmarried until the 18th birthday of the member's youngest child. Such monthly payments may be extended until the 25th birthday of the member's child if the child is unmarried and enrolled as a full-time student.

3. If the member leaves no surviving spouse but is survived by a child or children under 18 years of age, the benefits provided by subparagraph 1., normally payable to a surviving spouse, shall be paid for the use and benefit of such member's child or children under 18 years of age and unmarried until the 18th birthday of the member's youngest child. Such monthly payments may be extended until the 25th birthday of any of the member's children if the child is unmarried and enrolled as a full-time student.

(8) DESIGNATION OF BENEFICIARIES.—

(a) Each member may, on a form provided for that purpose, signed and filed with the division, designate a choice of one or more persons, named sequentially or jointly, as his or her beneficiary who shall receive the benefits, if any, which may be payable in the event of the member's death pursuant to the provisions of this chapter. If no beneficiary is named in the manner provided above, or if no beneficiary designated by the member survives the member, the beneficiary shall be the spouse of the deceased, if living. If the member's spouse is not alive at his or her death, the beneficiary shall be the living children of the member. If no children survive, the beneficiary shall be the member's father or mother, if living; otherwise, the beneficiary shall be the member's estate. The beneficiary most recently designated by a member on a form or letter filed with the division shall be the beneficiary entitled to any benefits payable at the time of the member's death, except that benefits shall be paid as provided in paragraph (7)(d) when death occurs in the line of duty. Notwithstanding any other provisions in this subsection to the contrary, for a member who dies prior to his or her effective date of retirement on or after January 1, 1999, the spouse at the time of death shall be the member's beneficiary unless such member designates a different beneficiary as provided herein subsequent to the member's most recent marriage.

(b) A designated beneficiary of a retirement account for whom there is a monetary interest may disclaim his or her monetary interest as provided in chapter 739 and in accordance with division rules governing such disclaimers. Such disclaimer must be filed within 24 months after the event that created the interest, that is, the death of the member or annuitant.

(c) Notwithstanding the member's designation of benefits to be paid through a trust to a beneficiary that is a natural person as provided in s. 121.021(46), and notwithstanding the provisions of the trust, benefits shall be paid directly to the beneficiary if the person is no longer a minor or an incapacitated person as defined in s. 744.102.

(9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

(a) Any person who is retired under this chapter, except under the disability retirement provisions of

subsection (4), may be employed by an employer that does not participate in a state-administered retirement system and receive compensation from that employment without limiting or restricting in any way the retirement benefits payable to that person.

(b) Any person whose retirement is effective before July 1, 2010, or whose participation in the Deferred Retirement Option Program terminates before July 1, 2010, except under the disability retirement provisions of subsection (4) or as provided in s. 121.053, may be reemployed by an employer that participates in a state-administered retirement system and receive retirement benefits and compensation from that employer, except that the person may not be reemployed by an employer participating in the Florida Retirement System before meeting the definition of termination in s. 121.021 and may not receive both a salary from the employer and retirement benefits for 12 calendar months immediately subsequent to the date of retirement. However, a DROP participant shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

1. A retiree who violates such reemployment limitation before completion of the 12-month limitation period must give timely notice of this fact in writing to the employer and to the Division of Retirement or the state board and shall have his or her retirement benefits suspended for the months employed or the balance of the 12-month limitation period as required in subparagraphs b. and c. A retiree employed in violation of this paragraph and an employer who employs or appoints such person are jointly and severally liable for reimbursement to the retirement trust fund, including the Florida Retirement System Trust Fund and the Florida Retirement System Investment Plan Trust Fund, from which the benefits were paid. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Retirement benefits shall remain suspended until repayment has been made. Benefits suspended beyond the reemployment limitation shall apply toward repayment of benefits received in violation of the reemployment limitation.

a. A district school board may reemploy a retiree as a substitute or hourly teacher, education paraprofessional, transportation assistant, bus driver, or food service worker on a noncontractual basis after he or she has been retired for 1 calendar month. A district school board may reemploy a retiree as instructional personnel, as defined in s. 1012.01(2)(a), on an annual contractual basis after he or she has been retired for 1 calendar month. Any member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. District school boards reemploying such teachers, education paraprofessionals, transportation assistants, bus drivers, or food service workers are subject to the retirement contribution required by subparagraph 2.

b. A Florida College System institution board of trustees may reemploy a retiree as an adjunct instructor or as a participant in a phased retirement program within the Florida College System, after he or she has been

retired for 1 calendar month. A member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. Boards of trustees reemploying such instructors are subject to the retirement contribution required in subparagraph 2. A retiree may be reemployed as an adjunct instructor for no more than 780 hours during the first 12 months of retirement. A retiree reemployed for more than 780 hours during the first 12 months of retirement must give timely notice in writing to the employer and to the Division of Retirement or the state board of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the 12 months of retirement. Any retiree employed in violation of this sub-subparagraph and any employer who employs or appoints such person without notifying the division to suspend retirement benefits are jointly and severally liable for any benefits paid during the reemployment limitation period. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by the retiree while reemployed in excess of 780 hours during the first 12 months of retirement must be repaid to the Florida Retirement System Trust Fund, and retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

c. The State University System may reemploy a retiree as an adjunct faculty member or as a participant in a phased retirement program within the State University System after the retiree has been retired for 1 calendar month. A member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. The State University System is subject to the retired contribution required in subparagraph 2., as appropriate. A retiree may be reemployed as an adjunct faculty member or a participant in a phased retirement program for no more than 780 hours during the first 12 months of his or her retirement. A retiree reemployed for more than 780 hours during the first 12 months of retirement must give timely notice in writing to the employer and to the Division of Retirement or the state board of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the 12 months. Any retiree employed in violation of this sub-subparagraph and any employer who employs or appoints such person without notifying the division to suspend retirement benefits are jointly and severally liable for any benefits paid during the reemployment limitation period. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by the retiree while reemployed in excess of 780 hours during the first 12 months of retirement must be repaid to the Florida Retirement System Trust Fund, and retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree's first 12 months of retirement shall apply toward repayment of

benefits received in violation of the 780-hour reemployment limitation.

d. The Board of Trustees of the Florida School for the Deaf and the Blind may reemploy a retiree as a substitute teacher, substitute residential instructor, or substitute nurse on a noncontractual basis after he or she has been retired for 1 calendar month. Any member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. The Board of Trustees of the Florida School for the Deaf and the Blind reemploying such teachers, residential instructors, or nurses is subject to the retirement contribution required by subparagraph 2.

e. A developmental research school may reemploy a retiree as a substitute or hourly teacher or an education paraprofessional as defined in s. 1012.01(2) on a noncontractual basis after he or she has been retired for 1 calendar month. A developmental research school may reemploy a retiree as instructional personnel, as defined in s. 1012.01(2)(a), on an annual contractual basis after he or she has been retired for 1 calendar month after retirement. Any member who is reemployed within 1 calendar month voids his or her application for retirement benefits. A developmental research school that reemploys retired teachers and education paraprofessionals is subject to the retirement contribution required by subparagraph 2.

f. A charter school may reemploy a retiree as a substitute or hourly teacher on a noncontractual basis after he or she has been retired for 1 calendar month. A charter school may reemploy a retired member as instructional personnel, as defined in s. 1012.01(2)(a), on an annual contractual basis after he or she has been retired for 1 calendar month after retirement. Any member who is reemployed within 1 calendar month voids his or her application for retirement benefits. A charter school that reemploys such teachers is subject to the retirement contribution required by subparagraph 2.

2. The employment of a retiree or DROP participant of a state-administered retirement system does not affect the average final compensation or years of creditable service of the retiree or DROP participant. Before July 1, 1991, upon employment of any person, other than an elected officer as provided in s. 121.053, who is retired under a state-administered retirement program, the employer shall pay retirement contributions in an amount equal to the unfunded actuarial liability portion of the employer contribution which would be required for regular members of the Florida Retirement System. Effective July 1, 1991, contributions shall be made as provided in s. 121.122 for retirees who have renewed membership or, as provided in subsection (13), for DROP participants.

3. Any person who is holding an elective public office which is covered by the Florida Retirement System and who is concurrently employed in nonelected covered employment may elect to retire while continuing employment in the elective public office if he or she terminates his or her nonelected covered employment. Such person shall receive his or her retirement benefits in addition to the compensation of the elective office without regard to the time limitations

otherwise provided in this subsection. A person who seeks to exercise the provisions of this subparagraph as they existed before May 3, 1984, may not be deemed to be retired under those provisions, unless such person is eligible to retire under this subparagraph, as amended by chapter 84-11, Laws of Florida.

(c) Any person whose retirement is effective on or after July 1, 2010, or whose participation in the Deferred Retirement Option Program terminates on or after July 1, 2010, who is retired under this chapter, except under the disability retirement provisions of subsection (4) or as provided in s. 121.053, may be reemployed by an employer that participates in a state-administered retirement system and receive retirement benefits and compensation from that employer. However, a person may not be reemployed by an employer participating in the Florida Retirement System before meeting the definition of termination in s. 121.021 and may not receive both a salary from the employer and retirement benefits for 6 calendar months after meeting the definition of termination, except as provided in paragraph (f). However, a DROP participant shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

1. The reemployed retiree may not renew membership in the Florida Retirement System, except as provided in s. 121.122.

2. The employer shall pay retirement contributions in an amount equal to the unfunded actuarial liability portion of the employer contribution that would be required for active members of the Florida Retirement System in addition to the contributions required by s. 121.76.

3. A retiree initially reemployed in violation of this paragraph and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any retirement benefits paid to the retirement trust fund from which the benefits were paid, including the Florida Retirement System Trust Fund and the Florida Retirement System Investment Plan Trust Fund, as appropriate. The employer must have a written statement from the employee that he or she is not retired from a state-administered retirement system. Retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree's 6-month reemployment limitation period shall apply toward the repayment of benefits received in violation of this paragraph.

(d) This subsection applies to retirees, as defined in s. 121.4501(2), of the Florida Retirement System Investment Plan, subject to the following conditions:

1. A retiree may not be reemployed with an employer participating in the Florida Retirement System until such person has been retired for 6 calendar months.

2. A retiree employed in violation of this subsection and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any benefits paid to the retirement trust fund from which the benefits were paid. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system.

(e) The limitations of this subsection apply to reemployment in any capacity irrespective of the category of funds from which the person is compensated.

(f) A retired law enforcement officer may be reemployed as a school resource officer by an employer that participates in the Florida Retirement System and receive compensation from that employer and retirement benefits after meeting the definition of termination in s. 121.021, but may not receive both a salary from the employer and retirement benefits for 6 calendar months immediately subsequent to the date of retirement. The reemployed retired law enforcement officer may not renew membership in the Florida Retirement System, except as provided in s. 121.122.

(10) FUTURE BENEFITS BASED ON ACTUARIAL DATA.—It is the intent of the Legislature that future benefit increases enacted into law in this chapter shall be financed concurrently by increased contributions or other adequate funding, and such funding shall be based on sound actuarial data as developed by the actuary or state retirement actuary, as provided in ss. 121.021(6) and 121.192.

(11) A member who becomes eligible to retire and has accumulated the maximum benefit of 100 percent of average final compensation may continue in active service, and, if upon the member's retirement the member elects to receive a retirement compensation pursuant to subsection (2), subsection (6), or subsection (7), the actuarial equivalent percentage factor applicable to the age of such member at the time the member reached the maximum benefit and to the age, at that time, of the member's spouse shall determine the amount of benefits to be paid.

(12) SPECIAL PROVISIONS FOR PAYMENT OF CERTAIN SURVIVOR BENEFITS.—Notwithstanding any provision of this chapter to the contrary, for members with an effective date of retirement, or date of death if prior to retirement, on or after January 1, 1996, the named joint annuitant, as defined in s. 121.021(28)(b), who is eligible to receive benefits under subparagraph (6)(a)3. or subparagraph (6)(a)4., shall receive the maximum monthly retirement benefit that would have been payable to the member under subparagraph (6)(a)1.; however, payment of such benefit shall cease the month the joint annuitant attains age 25 unless such joint annuitant is disabled and incapable of self-support, in which case, benefits shall cease when the joint annuitant is no longer disabled. The administrator may require proof of disability or continued disability in the same manner as is provided for a member seeking or receiving a disability retirement benefit under subsection (4).

<sup>2</sup>(13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and subject to this section, the Deferred Retirement Option Program, hereinafter referred to as DROP, is a program under which an eligible member of the Florida Retirement System may elect to participate, deferring receipt of retirement benefits while continuing employment with his or her Florida Retirement System employer. The deferred monthly benefits shall accrue in the Florida Retirement System on behalf of the member, plus interest compounded monthly, for

the specified period of the DROP participation, as provided in paragraph (c). Upon termination of employment, the member shall receive the total DROP benefits and begin to receive the previously determined normal retirement benefits. Participation in the DROP does not guarantee employment for the specified period of DROP. Participation in DROP by an eligible member beyond the initial 60-month period as authorized in this subsection shall be on an annual contractual basis for all participants.

(a) *Eligibility of member to participate in DROP.*—All active Florida Retirement System members in a regularly established position, and all active members of the Teachers' Retirement System established in chapter 238 or the State and County Officers' and Employees' Retirement System established in chapter 122, which are consolidated within the Florida Retirement System under s. 121.011, are eligible to elect participation in DROP if:

1. The member is not a renewed member under s. 121.122 or a member of the State Community College System Optional Retirement Program under s. 121.051, the Senior Management Service Optional Annuity Program under s. 121.055, or the optional retirement program for the State University System under s. 121.35.

2. Except as provided in subparagraph 6., for members initially enrolled before July 1, 2011, election to participate is made within 12 months immediately following the date on which the member first reaches normal retirement date, or, for a member who reaches normal retirement date based on service before he or she reaches age 62, or age 55 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains age 57, or age 52 for Special Risk Class members. Except as provided in subparagraph 6., for members initially enrolled on or after July 1, 2011, election to participate is made within 12 months immediately following the date on which the member first reaches normal retirement date, or, for a member who reaches normal retirement date based on service before he or she reaches age 65, or age 60 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains age 60, or age 55 for Special Risk Class members. A member who delays DROP participation during the 12-month period immediately following his or her maximum DROP deferral date, except as provided in subparagraph 6., loses a month of DROP participation for each month delayed. A member who fails to make an election within the 12-month limitation period forfeits all rights to participate in DROP. The member shall advise his or her employer and the division in writing of the date DROP begins. The beginning date may be subsequent to the 12-month election period but must be within the original 60-month participation period provided in subparagraph (b)1. When establishing eligibility to participate in DROP, the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member who has dual normal retirement dates is

eligible to elect to participate in DROP after attaining normal retirement date in either class.

3. The employer of a member electing to participate in DROP, or employers if dually employed, shall acknowledge in writing to the division the date the member's participation in DROP begins and the date the member's employment and DROP participation terminates.

4. Simultaneous employment of a member by additional Florida Retirement System employers subsequent to the commencement of a member's participation in DROP is permissible if such employers acknowledge in writing a DROP termination date no later than the member's existing termination date or the maximum participation period provided in subparagraph (b)1.

5. A member may change employers while participating in DROP, subject to the following:

a. A change of employment takes place without a break in service so that the member receives salary for each month of continuous DROP participation. If a member receives no salary during a month, DROP participation ceases unless the employer verifies a continuation of the employment relationship for such member pursuant to s. 121.021(39)(b).

b. The member and new employer notify the division of the identity of the new employer on forms required by the division.

c. The new employer acknowledges, in writing, the member's DROP termination date, which may be extended but not beyond the maximum participation period provided in subparagraph (b)1., acknowledges liability for any additional retirement contributions and interest required if the member fails to timely terminate employment, and is subject to the adjustment required in sub-subparagraph (c)5.d.

6. Effective July 1, 2001, for instructional personnel as defined in s. 1012.01(2), election to participate in DROP may be made at any time following the date on which the member first reaches normal retirement date. The member shall advise his or her employer and the division in writing of the date on which DROP begins. When establishing eligibility of the member to participate in DROP for the 60-month participation period provided in subparagraph (b)1., the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member who has dual normal retirement dates is eligible to elect to participate in either class.

(b) *Participation in DROP.*—Except as provided in this paragraph, an eligible member may elect to participate in DROP for a period not to exceed a maximum of 60 calendar months.

1.a. An eligible member may elect to participate in DROP for a period not to exceed a maximum of 60 calendar months. However, members who are instructional personnel employed by the Florida School for the Deaf and the Blind and authorized by the Board of Trustees of the Florida School for the Deaf and the Blind, who are instructional personnel as defined in s. 1012.01(2)(a)-(d) in grades K-12 and authorized by the district school superintendent, or who are instructional

personnel as defined in s. 1012.01(2)(a) employed by a developmental research school and authorized by the school's director, or if the school has no director, by the school's principal, may participate in DROP for up to 36 calendar months beyond the 60-month period. Effective July 1, 2018, instructional personnel who are authorized to extend DROP participation beyond the 60-month period must have a termination date that is the last day of the last calendar month of the school year within the DROP extension granted by the employer. If, on July 1, 2018, the member's DROP participation has already been extended for the maximum 36 calendar months and the extension period concludes before the end of the school year, the member's DROP participation may be extended through the last day of the last calendar month of that school year. The employer shall notify the division of the change in termination date and the additional period of DROP participation for the affected instructional personnel.

b. Administrative personnel in grades K-12, as defined in s. 1012.01(3), who have a DROP termination date on or after July 1, 2018, may be authorized to extend DROP participation beyond the initial 60 calendar month period if the administrative personnel's termination date is before the end of the school year. Such administrative personnel may have DROP participation extended until the last day of the last calendar month of the school year in which their original DROP termination date occurred if a date other than the last day of the last calendar month of the school year is designated. The employer shall notify the division of the change in termination date and the additional period of DROP participation for the affected administrative personnel.

2. Upon deciding to participate in DROP, the member shall submit, on forms required by the division:

a. A written election to participate in DROP;

b. Selection of DROP participation and termination dates that satisfy the limitations stated in paragraph (a) and subparagraph 1. The termination date must be in a binding letter of resignation to the employer establishing a deferred termination date. The member may change the termination date within the limitations of subparagraph 1., but only with the written approval of the employer;

c. A properly completed DROP application for service retirement as provided in this section; and

d. Any other information required by the division.

3. The DROP participant is a retiree under the Florida Retirement System for all purposes, except for paragraph (5)(f) and subsection (9) and ss. 112.3173, 112.363, 121.053, and 121.122. DROP participation is final and may not be canceled by the participant after the first payment is credited during the DROP participation period. However, participation in DROP does not alter the participant's employment status, and the member is not deemed retired from employment until his or her deferred resignation is effective and termination occurs as defined in s. 121.021.

4. Elected officers are eligible to participate in DROP subject to the following:

a. An elected officer who reaches normal retirement date during a term of office may defer the election

to participate until the next succeeding term in that office. An elected officer who exercises this option may participate in DROP for up to 60 calendar months or no longer than the succeeding term of office, whichever is less.

b. An elected or a nonelected participant may run for a term of office while participating in DROP and, if elected, extend the DROP termination date accordingly; however, if such additional term of office exceeds the 60-month limitation established in subparagraph 1., and the officer does not resign from office within such 60-month limitation, the retirement and the participant's DROP is null and void as provided in sub-subparagraph (c)5.d.

c. An elected officer who is dually employed and elects to participate in DROP must terminate all employment relationships as provided in s. 121.021(39) for the nonelected position within the original 60-month period or maximum participation period as provided in subparagraph 1. For DROP participation ending:

(I) Before July 1, 2010, the officer may continue employment as an elected officer as provided in s. 121.053. The elected officer shall be enrolled as a renewed member in the Elected Officers' Class or the Regular Class, as provided in ss. 121.053 and 121.122, on the first day of the month after termination of employment in the nonelected position and termination of DROP. Distribution of the DROP benefits shall be made as provided in paragraph (c).

(II) On or after July 1, 2010, the officer may continue employment as an elected officer but must defer termination as provided in s. 121.053.

(c) *Benefits payable under DROP.—*

1. Effective on the date of DROP participation, the member's initial normal monthly benefit, including creditable service, optional form of payment, and average final compensation, and the effective date of retirement are fixed. The beneficiary established under the Florida Retirement System is the beneficiary eligible to receive any DROP benefits payable if the DROP participant dies before completing the period of DROP participation. If a joint annuitant predeceases the member, the member may name a beneficiary to receive accumulated DROP benefits payable. The retirement benefit, the annual cost of living adjustments provided in s. 121.101, and interest accrue monthly in the Florida Retirement System Trust Fund. For members whose DROP participation begins:

a. Before July 1, 2011, the interest accrues at an effective annual rate of 6.5 percent compounded monthly, on the prior month's accumulated ending balance, up to the month of termination or death, except as provided in s. 121.053(7).

b. On or after July 1, 2011, the interest accrues at an effective annual rate of 1.3 percent, compounded monthly, on the prior month's accumulated ending balance, up to the month of termination or death, except as provided in s. 121.053(7).

2. Each employee who elects to participate in DROP may elect to receive a lump-sum payment for accrued annual leave earned in accordance with agency policy upon beginning participation in DROP.

The accumulated leave payment certified to the division upon commencement of DROP shall be included in the calculation of the member's average final compensation. The employee electing the lump-sum payment is not eligible to receive a second lump-sum payment upon termination, except to the extent the employee has earned additional annual leave which, combined with the original payment, does not exceed the maximum lump-sum payment allowed by the employing agency's policy or rules. An early lump-sum payment shall be based on the hourly wage of the employee at the time he or she begins participation in DROP. If the member elects to wait and receive a lump-sum payment upon termination of DROP and termination of employment with the employer, any accumulated leave payment made at that time may not be included in the member's retirement benefit, which was determined and fixed by law when the employee elected to participate in DROP.

3. The effective date of DROP participation and the effective date of retirement of a DROP participant shall be the first day of the month selected by the member to begin participation in DROP, provided such date is properly established, with the written confirmation of the employer, and the approval of the division, on forms required by the division.

4. Normal retirement benefits and any interest continue to accrue in DROP until the established termination date of DROP or until the member terminates employment or dies before such date, except as provided in s. 121.053(7). Although individual DROP accounts may not be established, a separate accounting of each member's accrued benefits under DROP shall be calculated and provided to the member.

5. At the conclusion of the member's participation in DROP, the division shall distribute the member's total accumulated DROP benefits, subject to the following:

a. The division shall receive verification by the member's employer or employers that the member has terminated all employment relationships as provided in s. 121.021(39).

b. The terminated DROP participant or, if deceased, the member's named beneficiary, shall elect on forms provided by the division to receive payment of the DROP benefits in accordance with one of the options listed below. If a member or beneficiary fails to elect a method of payment within 60 days after termination of DROP, the division shall pay a lump sum as provided in sub-sub-subparagraph (I).

(I) **Lump sum.**—All accrued DROP benefits, plus interest, less withholding taxes remitted to the Internal Revenue Service, shall be paid to the DROP participant or surviving beneficiary.

(II) **Direct rollover.**—All accrued DROP benefits, plus interest, shall be paid from DROP directly to the custodian of an eligible retirement plan as defined in s. 402(c)(8)(B) of the Internal Revenue Code. However, in the case of an eligible rollover distribution to the surviving spouse of a deceased member, an eligible retirement plan is an individual retirement account or an individual retirement annuity as described in s. 402(c)(9) of the Internal Revenue Code.

(III) **Partial lump sum.**—A portion of the accrued DROP benefits shall be paid to DROP participant or

surviving spouse, less withholding taxes remitted to the Internal Revenue Service, and the remaining DROP benefits must be transferred directly to the custodian of an eligible retirement plan as defined in s. 402(c)(8)(B) of the Internal Revenue Code. However, in the case of an eligible rollover distribution to the surviving spouse of a deceased member, an eligible retirement plan is an individual retirement account or an individual retirement annuity as described in s. 402(c)(9) of the Internal Revenue Code. The proportions must be specified by the DROP participant or surviving beneficiary.

c. The form of payment selected by the DROP participant or surviving beneficiary must comply with the minimum distribution requirements of the Internal Revenue Code.

d. A DROP participant who fails to terminate all employment relationships as provided in s. 121.021(39) shall be deemed as not retired, and the DROP election is null and void. Florida Retirement System membership shall be reestablished retroactively to the date of the commencement of DROP, and each employer with whom the member continues employment must pay to the Florida Retirement System Trust Fund the difference between the DROP contributions paid in paragraph (i) and the contributions required for the applicable Florida Retirement System class of membership during the period the member participated in DROP, plus 6.5 percent interest compounded annually.

6. The retirement benefits of any DROP participant who terminates all employment relationships as provided in s. 121.021(39) but is reemployed in violation of the reemployment provisions of subsection (9) are suspended during those months in which the retiree is in violation. Any retiree in violation of this subparagraph and any employer that employs or appoints such person without notifying the division to suspend retirement benefits are jointly and severally liable for any benefits paid during the reemployment limitation period. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by a retiree while employed in violation of the reemployment limitations must be repaid to the Florida Retirement System Trust Fund, and his or her retirement benefits shall remain suspended until payment is made. Benefits suspended beyond the end of the reemployment limitation period apply toward repayment of benefits received in violation of the reemployment limitation.

7. The accrued benefits of any DROP participant, and any contributions accumulated under the program, are not subject to assignment, execution, attachment, or any legal process except for qualified domestic relations court orders, income deduction orders as provided in s. 61.1301, and federal income tax levies.

8. DROP participants are not eligible for disability retirement benefits as provided in subsection (4).

(d) *Death benefits under DROP.*—

1. Upon the death of a DROP participant, the named beneficiary is entitled to apply for and receive the accrued benefits in DROP as provided in sub-subparagraph (c)5.b.

2. The normal retirement benefit accrued to DROP during the month of a participant's death is the final monthly benefit credited for such DROP participant.

3. Eligibility to participate in DROP terminates upon death of the participant. If the participant dies on or after the effective date of enrollment in DROP, but before the first monthly benefit is credited to DROP, Florida Retirement System benefits are paid in accordance with subparagraph (7)(c)1. or subparagraph 2.

4. A DROP participant's survivors are not eligible to receive Florida Retirement System death benefits as provided in paragraph (7)(d).

(e) *Cost-of-living adjustment*.—On each July 1, the participant's normal retirement benefit shall be increased as provided in s. 121.101.

(f) *Retiree health insurance subsidy*.—DROP participants are not eligible to apply for the retiree health insurance subsidy payments as provided in s. 112.363 until such participants have terminated employment and participation in DROP.

(g) *Renewed membership*.—DROP participants are not eligible for renewed membership in the Florida Retirement System under ss. 121.053 and 121.122 until all employment relationships are terminated as provided in s. 121.021(39).

(h) *Employment limitation after DROP participation*. Upon termination as defined in s. 121.021, DROP participants are subject to the same reemployment limitations as other retirees. Reemployment restrictions applicable to retirees as provided in subsection (9) do not apply to DROP participants until their employment and participation in DROP are terminated.

(i) *Contributions*.—

1. All employers paying the salary of a DROP participant filling a regularly established position shall contribute 8.0 percent of such participant's gross compensation for the period of July 1, 2002, through June 30, 2003, and the percentage of such compensation required by s. 121.71 thereafter, which shall constitute the entire employer DROP contribution with respect to such participant. Such contributions, payable to the Florida Retirement System Trust Fund in the same manner as required in s. 121.071, must be made as appropriate for each pay period and are in addition to contributions required for social security and the Retiree Health Insurance Subsidy Trust Fund. Such employer, social security, and health insurance subsidy contributions are not included in DROP.

2. The employer shall, in addition to subparagraph 1., also withhold one-half of the entire social security contribution required for the participant. Contributions for social security by each participant and each employer, in the amount required for social security coverage as provided by the federal Social Security Act, are in addition to contributions specified in subparagraph 1.

3. All employers paying the salary of a DROP participant filling a regularly established position shall contribute the percent of such participant's gross compensation required in s. 121.071(4), which constitutes the employer's health insurance subsidy contribution with respect to such participant. Such contributions must be deposited by the administrator in the Retiree Health Insurance Subsidy Trust Fund.

(j) *Forfeiture of retirement benefits*.—This section does not remove DROP participants from the scope of s. 8(d), Art. II of the State Constitution, s. 112.3173, and paragraph (5)(f). DROP participants who commit a specified felony offense while employed are subject to forfeiture of all retirement benefits, including DROP benefits, pursuant to those provisions of law.

(k) *Administration of program*.—The division shall adopt rules as necessary for the effective and efficient administration of this subsection. The division is not required to advise members of the federal tax consequences of an election related to the DROP but may advise members to seek independent advice.

(14) PAYMENT OF BENEFITS.—This subsection applies to the payment of benefits to a payee (retiree or beneficiary) under the Florida Retirement System:

(a) Federal income tax shall be withheld in accordance with federal law, unless the payee elects otherwise on Form W-4P. The division shall prepare and distribute to each recipient of monthly retirement benefits an appropriate income tax form that reflects the recipient's income and federal income tax withheld for the calendar year just ended.

(b) Subject to approval by the division in accordance with rule 60S-4.015, Florida Administrative Code, a payee receiving retirement benefits under the system may also have the following payments deducted from his or her monthly benefit:

1. Premiums for life and health-related insurance policies from approved companies.

2. Life insurance premiums for the State Group Life Insurance Plan, if authorized in writing by the payee and by the department.

3. Repayment of overpayments from the Florida Retirement System Trust Fund, the State Employees' Health Insurance Trust Fund, or the State Employees' Life Insurance Trust Fund, upon notification of the payee.

4. Payments to an alternate payee for alimony or child support pursuant to an income deduction order under s. 61.1301, or division of marital assets pursuant to a qualified domestic relations order under s. 222.21.

5. Payments to the Internal Revenue Service for federal income tax levies, upon notification of the division by the Internal Revenue Service.

(c) A payee must notify the division of any change in his or her address. The division may suspend benefit payments to a payee if correspondence sent to the payee's mailing address is returned due to an incorrect address. Benefit payments shall be resumed upon notification to the division of the payee's new address.

(d) A payee whose retirement benefits are reduced by the application of maximum benefit limits under s. 415(b) of the Internal Revenue Code, as specified in s. 121.30(5), shall have the portion of his or her calculated benefit in the Florida Retirement System Pension Plan which exceeds such federal limitation paid through the Florida Retirement System Preservation of Benefits Plan, as provided in s. 121.1001.

(e) The Division of Retirement may issue retirement benefits payable for division of marital assets pursuant to a qualified domestic relations order directly to the alternate payee, any court order to the contrary



notwithstanding, in order to meet Internal Revenue Code requirements.

(f) A benefit may not be reduced for the purpose of preserving the member's eligibility for a federal program.

(g) The division shall adopt rules establishing procedures for determining that persons to whom benefits are being paid are still living. The division shall suspend the benefits being paid to any payee if it is unable to contact such payee and to confirm that he or she is still living.

**History.**—s. 9, ch. 70-112; s. 1, ch. 71-22; s. 1, ch. 72-332; s. 1, ch. 72-334; s. 2, ch. 72-344; s. 3, ch. 72-345; s. 3, ch. 72-388; ss. 6, 7, ch. 74-302; s. 2, ch. 74-328; s. 2, ch. 74-376; s. 1, ch. 75-86; s. 1, ch. 77-286; s. 6, ch. 78-308; s. 3, ch. 79-375; s. 2, ch. 80-126; s. 1, ch. 80-128; ss. 1, 3, ch. 80-130; s. 3, ch. 80-242; s. 5, ch. 81-307; s. 1, ch. 83-58; s. 7, ch. 83-76; ss. 1, 2, ch. 84-11; ss. 10, 20, ch. 84-266; s. 1, ch. 85-137; s. 4, ch. 85-220; s. 1, ch. 85-246; s. 3, ch. 86-172; s. 1, ch. 87-149; s. 1, ch. 88-61; s. 2, ch. 88-238; s. 13, ch. 88-382; s. 2, ch. 89-220; s. 1, ch. 89-260; s. 15, ch. 89-367; s. 13, ch. 90-274; s. 5, ch. 90-301; s. 1, ch. 91-276; s. 7, ch. 92-122; s. 5, ch. 93-149; s. 8, ch. 93-193; s. 4, ch. 93-285; s. 773, ch. 95-147; s. 2, ch. 95-338; s. 7, ch. 96-368; s. 2, ch. 97-154; s. 8, ch. 97-180; s. 1, ch. 98-18; s. 9, ch. 98-138; s. 9, ch. 98-292; s. 7, ch. 98-413; s. 54, ch. 99-2; s. 5, ch. 99-7; s. 6, ch. 99-9; s. 37, ch. 99-255; s. 1, ch. 99-389; s. 11, ch. 99-392; s. 1, ch. 2000-167; ss. 15, 17, ch. 2000-169; s. 7, ch. 2000-347; s. 2, ch. 2001-47; s. 19, ch. 2001-60; s. 2, ch. 2001-235; s. 5, ch. 2002-177; ss. 14, 15, ch. 2002-273; s. 899, ch. 2002-387; s. 2, ch. 2003-260; s. 8, ch. 2003-391; s. 15, ch. 2004-260; s. 25, ch. 2004-295; s. 3, ch. 2005-108; s. 1, ch. 2005-134; s. 2, ch. 2005-253; s. 29, ch. 2006-178; s. 20, ch. 2008-4; s. 4, ch. 2008-108; s. 9, ch. 2009-209; s. 15, ch. 2010-5; s. 15, ch. 2011-68; s. 6, ch. 2012-222; s. 17, ch. 2013-15; s. 1, ch. 2016-213; s. 9, ch. 2017-88; s. 7, ch. 2018-3; s. 10, ch. 2018-110; s. 1, ch. 2018-150; s. 1, ch. 2020-19.

**1Note.**—Section 9, ch. 2003-260, provides in pertinent part that “[i]t is the intent of the Legislature that the costs attributable to the modifications to the retirement laws by this act regarding the reemployment of instructional personnel shall be funded by an increase in payroll contribution rates beginning in fiscal year 2004-2005.”

**2Note.**—

A. Section 11, ch. 2001-235, as amended by s. 8, ch. 2002-177, provides that “[i]t is the intent of the Legislature that the costs attributable to the additional cost-of-living increase for special risk retirees and Deferred Retirement Option Program participants as provided under section 2 shall be funded by recognition of excess actuarial assets, amortized over 30 years with the payments assumed to remain relatively stable when expressed as a percentage of payroll. For fiscal year 2001-2002, the payment shall be \$9.3 million. For fiscal year 2002-2003, the payment shall be \$15.1 million, and, thereafter, payments shall increase by 5 percent per year. If insufficient funds are available to fund this additional cost through recognition of excess actuarial assets in fiscal year 2002-2003 and any year thereafter, and there remains an unfunded actuarial liability attributable to the one-time cost-of-living increase provided under section 2, the payroll contribution rate for the Special Risk Class of the Florida Retirement System shall be increased by .93 percent effective July 1 of that year, unless the Legislature provides an alternative funding mechanism before that date.” Section 2, ch. 2001-235, amended s. 121.091(13)(b), relating to the Deferred Retirement Option Program, to add a provision relating to elected officers. The intended reference may be to s. 10, ch. 2001-235, which provides a one-time special cost-of-living increase for members of the Special Risk Class.

B. Section 9, ch. 2003-260, provides in pertinent part that “[i]t is the intent of the Legislature that the costs attributable to the modifications to the retirement laws by this act regarding the reemployment of instructional personnel shall be funded by an increase in payroll contribution rates beginning in fiscal year 2004-2005.”

### **121.095 Florida Retirement System Preservation of Benefits Plan Trust Fund.—**

(1) The Florida Retirement System Preservation of Benefits Plan Trust Fund is created within the Division of Retirement.

(a) Funds to be credited to the trust fund shall consist of Florida Retirement System monthly retirement contributions required to meet the requirements for payment of restored benefits under the Florida Retirement System Preservation of Benefits Plan, as specified in s. 121.1001.

(b) The trust fund shall be maintained and utilized solely for the purpose of providing benefits under the Preservation of Benefits Plan, as specified in s. 121.1001.

(c) The trust fund shall be separate and apart from the Florida Retirement System Trust Fund. The trust fund moneys and assets shall not be commingled with nor ever receive a transfer of moneys and assets from

the remainder of the Florida Retirement System, including, but not limited to, the Florida Retirement System Trust Fund, or any other qualified retirement plan administered by the Division of Retirement.

(d) The trust fund shall be funded on a month-to-month basis. Trust fund assets shall not be accumulated to pay future benefits.

(2) Any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall only be available for paying administrative expenses of the Preservation of Benefits Plan for the current plan year or for future plan years.

(3) The Legislature declares that the Florida Retirement System Preservation of Benefits Plan Trust Fund is exempt from the automatic termination provisions of s. 19(f)(3), Art. III of the State Constitution.

**History.**—s. 1, ch. 99-314.

**121.1001 Florida Retirement System Preservation of Benefits Plan.**—Effective July 1, 1999, the Florida Retirement System Preservation of Benefits Plan is established as a qualified governmental excess benefit arrangement pursuant to s. 415(m) of the Internal Revenue Code. The Preservation of Benefits Plan is created as a separate portion of the Florida Retirement System, for the purpose of providing benefits to a payee (retiree or beneficiary) of the Florida Retirement System whose benefits would otherwise be limited by s. 415(b) of the Internal Revenue Code.

(1) **ELIGIBILITY TO PARTICIPATE IN THE PRESERVATION OF BENEFITS PLAN.**—A payee of the Florida Retirement System shall participate in the Preservation of Benefits Plan if his or her earned benefit under the Florida Retirement System Pension Plan exceeds the benefit maximum established under s. 415(b) of the Internal Revenue Code. Participation in the Preservation of Benefits Plan shall continue for as long as the payee's earned benefit under the pension plan is reduced by the application of the maximum benefit limit under s. 415(b) of the Internal Revenue Code.

(2) **BENEFITS PAYABLE UNDER THE PRESERVATION OF BENEFITS PLAN.**—

(a) On and after July 1, 1999, the division shall pay to each eligible payee of the Florida Retirement System who retires before, on, or after that date, a supplemental retirement benefit equal to the difference between the amount of the payee's monthly retirement benefit which would have been payable under the Florida Retirement System Pension Plan if not for a reduction due to the application of s. 415(b) of the Internal Revenue Code and the reduced monthly retirement benefit as paid to the payee. The Preservation of Benefits Plan benefit shall be computed and payable under the same terms and conditions and to the same person as would have applied under the pension plan were it not for the federal limitation.

(b) The benefits under the Preservation of Benefits Plan shall not be subject to execution, garnishment, attachment, or any other process of any court with respect to a payee under the Preservation of Benefits Plan except for qualified domestic relations orders by a

court of competent jurisdiction, income deduction orders as provided in s. 61.1301, and federal income tax levies.

(3) **CONTRIBUTIONS.**—

(a) The Preservation of Benefits Plan shall be unfunded within the meaning of the federal tax laws. No payee contributions or deferrals, direct or indirect, by election or otherwise shall be made or allowed under the Preservation of Benefits Plan. Benefits due under the Preservation of Benefits Plan as determined by the Division of Retirement shall be paid timely from the Preservation of Benefits Plan Trust Fund, if created by law.

(b) Florida Retirement System monthly retirement contributions paid to the Division of Retirement by the payee's past covered employer shall be reduced by the employer as directed by the Division of Retirement by an amount necessary to meet the requirements for payment of restored benefits under the Preservation of Benefits Plan.

(4) **ADMINISTRATION.**—The Division of Retirement shall compile and maintain all records necessary or appropriate for the administration of the Preservation of Benefits Plan, including, but not limited to, the making of requisite calculations and disbursements under the Preservation of Benefits Plan.

**History.**—s. 2, ch. 99-389; s. 16, ch. 2011-68; s. 37, ch. 2012-116.

**121.101 Cost-of-living adjustment of benefits.**

(1) The purpose of this section is to provide cost-of-living adjustments to the monthly benefits payable to retired members of state-supported retirement systems.

(2) As used in this section, "initial benefit" means the first monthly benefit payable to a retiree or beneficiary in accordance with the laws governing the determination of such benefit at the time of retirement or earlier death.

(3) Commencing July 1, 1987, the benefit of each retiree and annuitant whose effective retirement date is before July 1, 2011, shall be adjusted annually on July 1 as follows:

(a) For those retirees and annuitants who have never received a cost-of-living adjustment under this section, the amount of the monthly benefit payable for the 12-month period commencing on the adjustment date shall be the amount of the member's initial benefit plus an amount equal to a percentage of the member's initial benefit; this percentage is derived by dividing the number of months the member has received an initial benefit by 12, and multiplying the result by 3.

(b) For those retirees and annuitants who have received a cost-of-living adjustment under this subsection, the adjusted monthly benefit shall be the amount of the monthly benefit being received on June 30 immediately preceding the adjustment date plus an amount equal to 3 percent of this benefit.

(4) For members whose effective retirement date is on or after July 1, 2011, the benefit of each retiree and annuitant shall be adjusted annually on July 1 as follows:

(a) For those retirees and annuitants who have never received a cost-of-living adjustment under this subsection, the amount of the monthly benefit payable for the 12-month period commencing on the adjustment date shall be the amount of the member's initial benefit

plus an amount equal to a percentage of the member's initial benefit. This percentage is derived by dividing the number of months the member has received an initial benefit by 12, and multiplying the result by the factor calculated pursuant to paragraph (c).

(b) For those retirees and annuitants who have received a cost-of-living adjustment under this subsection, the adjusted monthly benefit shall be the amount of the monthly benefit being received on June 30 immediately preceding the adjustment date plus an amount determined by multiplying the benefit by the factor calculated pursuant to paragraph (c).

(c) The department shall calculate a cost-of-living factor for each retiree and beneficiary retiring on or after July 1, 2011. This factor shall equal the product of 3 percent multiplied by the quotient of the sum of the member's service credit earned for service before July 1, 2011, divided by the sum of the member's total service credit earned.

(5) Subject to the availability of funding and the Legislature enacting sufficient employer contributions specifically for the purpose of funding the expiration of the cost-of-living adjustment specified in subsection (4), in accordance with s. 14, Art. X of the State Constitution, the cost-of-living adjustment formula provided for in subsection (4) shall expire effective June 30, 2016, and the benefit of each retiree and annuitant shall be adjusted on each July 1 thereafter, as provided in subsection (3).

(6) In no event shall a retiree's or annuitant's monthly retirement benefit be reduced, by the application of this section, below the benefit he or she was receiving as of July 1, 1970, or at the date of retirement, if later, nor shall the benefit be reduced below the minimum monthly benefit provided him or her under s. 112.362.

(7) The initial benefit of a retiree who elected an optional form of benefit payment which provided for a percentage of the benefit to be continued to a beneficiary after his or her death shall be reduced at the death of the retiree by application of the stated percentage.

(8) The funds necessary to pay for the cost-of-living adjustment provided by this section are hereby annually appropriated from the System Trust Fund.

(9) The purpose of this subsection is to establish a supplemental cost-of-living adjustment for certain retirees and beneficiaries who receive monthly retirement benefits under the provisions of this chapter and the existing systems consolidated therein, s. 112.05 for certain state officers and employees, and s. 238.171 for certain elderly incapacitated teachers.

(a) On July 1, 1996, each such retiree retiring prior to July 1, 1976, and each annuitant of such a retiree, who had 25 or more years of service, who is neither receiving nor eligible to receive social security benefits, and whose monthly benefit as of July 1, 1996, is less than \$1,000, shall, upon application to the administrator, receive a supplemental cost-of-living adjustment. Such supplemental cost-of-living adjustment shall be applied by adjusting the retiree's or annuitant's monthly benefit to an amount equal to the sum of the monthly benefit being received on July 1, 1996, plus a percentage of the

July 1, 1996, benefit. This percentage shall equal the product of 1 percent multiplied by the number of complete years that have elapsed between the member's date of retirement and July 1, 1996. However, if the supplemental cost-of-living adjustment plus the July 1, 1996, monthly benefit would exceed \$1,000, the adjustment shall be reduced to an amount which would result in a monthly benefit equal to \$1,000.

(b) Application for the supplemental cost-of-living adjustment provided by this subsection shall include certification by the retiree or annuitant that he or she is not receiving, and is not eligible to receive, social security benefits and shall include written authorization for the department to have access to information from the Social Security Administration concerning his or her entitlement to, or eligibility for, social security benefits. Such supplemental cost-of-living adjustment shall not be paid unless and until the application requirements of this paragraph are met.

**History.**—s. 10, ch. 70-112; s. 8, ch. 74-302; s. 4, ch. 80-242; s. 6, ch. 81-307; s. 37, ch. 83-217; s. 11, ch. 84-266; s. 1, ch. 87-534; s. 774, ch. 95-147; s. 8, ch. 96-368; s. 38, ch. 99-255; s. 17, ch. 2011-68.

#### **121.111 Credit for military service.—**

(1) Creditable service of any member shall also include military service as defined in s. 121.021(20)(a) if:

(a) The member is in the active employ of an employer immediately prior to such service and leaves a position, other than a temporary position, for the purpose of induction into the Armed Forces of the United States or entry upon duty in the Armed Forces of the United States. When applied to the Florida Retirement System:

1. The term "position other than a temporary position" means a regularly established position with a Florida Retirement System employer; and

2. A member shall be construed to have left his or her employment for military purposes if he or she reported for active duty within 60 days after leaving such employment;

(b) The member is entitled to reemployment under the provisions of the 'Veterans' Reemployment Rights Act (38 U.S.C. ss. 2021 et seq.);

(c) The member applies for reemployment with the same employer within the time set forth in s. 2021 or s. 2024 of the 'Veterans' Reemployment Rights Act, whichever is applicable, and is reemployed by such employer;

(d) The member makes the required employee contributions, if any, and the employer makes the required employer contributions for the employee's membership class for each month of service credit during such period of military service, based upon the employee's rate of monthly compensation as of the date that the employee left his or her position, plus 4 percent interest on such contributions compounded annually from the due date of the contribution until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until the payment is made to the proper retirement trust fund; and

(e) The period of service claimed pursuant to this subsection does not exceed the periods specified by the provisions of ss. 2021 and 2024 of the 'Veterans'

Reemployment Rights Act which are applicable in the member's case.

(2) Any member whose initial date of employment is before January 1, 1987, who has military service as defined in s. 121.021(20)(b), and who does not claim such service under subsection (1) may receive creditable service for such military service if:

(a) The member is vested;

(b) Creditable service, not to exceed a total of 4 years, is claimed only as service earned in the Regular Class of membership; and

(c) The member pays into the proper retirement trust fund 4 percent of gross salary, based upon his or her first year of salary subsequent to July 1, 1945, that he or she has credit for under this system, plus 4 percent interest thereon compounded annually from the date of first creditable service under this chapter until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until payment is made to the proper retirement trust fund.

(d) The member may not receive credit for any wartime military service if the member also receives credit for such service under any federal, state, or local retirement or pension system where "length of service" is a factor in determining the amount of compensation received. However, credit for wartime military service may be received where the member also receives credit under a pension system providing retired pay for nonregular service in the Armed Forces of the United States in accordance with 10 U.S.C. ss. 1331 et seq., as follows:

1. Any person whose retirement date under the Florida Retirement System is prior to July 1, 1985, may claim such service at any time, as provided in this subsection, upon payment of contributions and interest as provided in paragraph (c), with interest computed to the retired member's retirement date. The benefit shall be recalculated and increased to include the additional service credit granted for such wartime military service, and a lump-sum payment shall be made to the retiree for the amount owed due to the additional service credit, retroactive to the date of retirement.

2. Any person whose retirement date is on or after July 1, 1985, must claim such service and pay the required contributions, as provided in paragraph (c), prior to the commencement of his or her retirement benefits, as provided in this subsection.

(e) Any member claiming credit under this subsection must certify on the form prescribed by the department that credit for such service has not and will not be claimed for retirement purposes under any other federal, state, or local retirement or pension system where "length of service" is a factor in determining the amount of compensation received, except where credit for such service has been granted in a pension system providing retired pay for nonregular service as provided in paragraph (d). If the member dies prior to retirement, the member's beneficiary must make the required certification before credit may be claimed. If such certification is not made by the member or the member's beneficiary, credit for wartime military service shall not be allowed.

(f) Service credit awarded for wartime military service shall be the total number of years, months, and days from and including the date of entry into active duty through the date of discharge from active duty, up to a maximum of 4 years. If the military service includes a partial year, it shall be stated as a fraction of a year. Creditable military service shall be calculated in accordance with rule 60S-2.005(2)(j), Florida Administrative Code.

(3) Except as provided by law or rule, the employer is not required to make contributions for military service credit for any member.

**History.**—s. 11, ch. 70-112; s. 9, ch. 74-302; s. 12, ch. 84-266; s. 1, ch. 85-220; s. 3, ch. 91-3; s. 775, ch. 95-147; s. 10, ch. 98-138; s. 39, ch. 99-255.

**Note.**—Replaced by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. ss. 4301 et seq.).

**121.1115 Purchase of retirement credit for out-of-state or federal service.**—Effective January 1, 1995, a member may purchase creditable service for periods of public employment in another state and receive creditable service for such periods of employment. Service with the Federal Government, including any active military service, may be claimed. Upon completion of each year of service earned under the Florida Retirement System, a member may purchase up to 1 year of retirement credit for his or her out-of-state service, subject to the following provisions:

(1) **LIMITATIONS AND CONDITIONS.**—To receive credit for the out-of-state service:

(a) The out-of-state service must have been:

1. Performed in a position of employment with the state or a political subdivision thereof or with the Federal Government;

2. Covered by a retirement or pension plan provided by the state or political subdivision, or by the Federal Government, as appropriate; and

3. Performed prior to a period of membership in the Florida Retirement System.

(b) The member must have completed the years of creditable service required for vesting under the Florida Retirement System, excluding out-of-state service and in-state service claimed and purchased under s. 121.1122.

(c) Not more than 5 years of creditable service may be claimed for creditable service aggregated under this section and s. 121.1122.

(d) The out-of-state service credit shall be credited only as service in the Regular Class, and any benefit or pension based thereon is subject to the limitations and restrictions of s. 112.65.

(e) The member is not eligible for and may not receive a pension or benefit from a retirement or pension plan based on or including the out-of-state service. Eligibility for or the receipt of contributions to a retirement plan made by the employer on behalf of the employee is considered a benefit.

(f) To receive service credit for out-of-state service performed after leaving the Florida Retirement System, the member must complete at least 1 year of creditable service in the Florida Retirement System following the out-of-state service.

(2) **COST.**—For each year claimed, the member must pay into the Florida Retirement System Trust Fund

an amount equal to 20 percent of the member's annual compensation for the first full work year of creditable service earned under the Florida Retirement System, but not less than \$12,000, plus interest at 6.5 percent compounded annually from the date of first annual salary earned until full payment is made. The employer may pay all or a portion of the cost of this service credit.

**History.**—s. 10, ch. 94-259; s. 9, ch. 96-368; s. 11, ch. 97-180; s. 10, ch. 2000-169; ss. 40, 41, ch. 2003-399; s. 10, ch. 2009-209; s. 18, ch. 2011-68.

**121.1122 Purchase of retirement credit for in-state public service and in-state service in accredited nonpublic schools and colleges, including charter schools and charter technical career centers.**—Effective January 1, 1998, a member of the Florida Retirement System may purchase creditable service for periods of certain public or nonpublic employment performed in this state, as provided in this section.

(1) **PURCHASE OF RETIREMENT CREDIT AUTHORIZED.**—Subject to the provisions of subsections (2) and (3), a member of the Florida Retirement System may purchase up to 5 years of retirement credit for:

(a) Periods of public employment in this state; or

(b) Periods of employment in charter schools or charter technical career centers or in any nonpublic school or college in this state that is accredited by the Southern Association of Colleges and Schools.

Credit for 1 year of such service may be purchased for each year of creditable service a member completes under the Florida Retirement System.

(2) **LIMITATIONS AND CONDITIONS.**—

(a) A member is not eligible to receive credit for in-state service under this section until he or she has completed the years of creditable service required for vesting under the Florida Retirement System, excluding service purchased under this section and out-of-state service claimed and purchased under s. 121.1115.

(b) A member may not purchase and receive credit for more than 5 years of creditable service aggregated under this section and s. 121.1115.

(c) Service credit claimed under this section shall be credited only as service in the Regular Class and is subject to s. 112.65.

(d) Service credit may not be purchased under this section if the member is eligible to receive or is receiving a pension or benefit from a retirement or pension plan based on or including the service. Eligibility for or the receipt of contributions to a retirement plan made by the employer on behalf of the employee is considered a benefit.

(e) A member is eligible to receive service credit for in-state service performed after leaving the Florida Retirement System only after completing at least 1 year of creditable service in the Florida Retirement System following the in-state service.

(f) The service claimed must have been service covered by a retirement or pension plan provided by the employer.

(3) **COST.**—The cost to purchase retirement credit under this section shall be calculated in the same

manner as set forth in s. 121.1115(2) for purchase of credit for out-of-state service.

**History.**—s. 12, ch. 97-180; s. 2, ch. 98-18; s. 4, ch. 98-302; s. 8, ch. 98-413; s. 11, ch. 2000-169; ss. 42, 43, ch. 2003-399; s. 11, ch. 2009-209; s. 19, ch. 2011-68.

#### **121.121 Authorized leaves of absence.—**

(1) A member may purchase creditable service for up to 2 work years of authorized leaves of absence, including any leaves of absence covered under the Family Medical Leave Act, if:

(a) The member has completed the years of creditable service required for vesting, excluding periods for which a leave of absence was authorized;

(b) The leave of absence is authorized in writing by the employer of the member and approved by the administrator;

(c) The member returns to active employment performing service with a Florida Retirement System employer in a regularly established position immediately upon termination of the leave of absence and remains on the employer's payroll for 1 calendar month, except that a member who retires on disability while on a medical leave of absence may not be required to return to employment. A member whose work year is less than 12 months and whose leave of absence terminates between school years is eligible to receive credit for the leave of absence if he or she returns to the employment at the beginning of the next school year and remains on the employer's payroll for 1 calendar month; and

(d) The member makes the required contributions for service credit during the leave of absence, which shall be 8 percent until January 1, 1975, and 9 percent thereafter of his or her rate of monthly compensation in effect immediately before the commencement of such leave for each month of such period, plus 4 percent interest until July 1, 1975, and 6.5 percent interest thereafter on such contributions, compounded annually each June 30 from the due date of the contribution to date of payment.

1. Effective July 1, 1980, any leave of absence purchased pursuant to this section is at the contribution rates specified in s. 121.071 or s. 121.71 in effect at the time the leave is granted for the class of membership from which the leave of absence was granted; however, any member who purchased leave-of-absence credit before July 1, 1980, for a leave of absence from a position in a class other than the regular membership class, may pay the appropriate additional contributions plus compound interest thereon and receive creditable service for such leave of absence in the membership class from which the member was granted the leave of absence.

2. Effective July 1, 2011, any leave of absence purchased by the member pursuant to this section shall be at the employer and employee contribution rates specified in s. 121.71 in effect during the leave for the class of membership from which the leave of absence was granted.

(2) A member who is required to resign his or her office as a subordinate officer, deputy sheriff, or police officer because he or she is a candidate for a public office which is currently held by his or her superior officer who is also a candidate for reelection to the same office, in accordance with s. 99.012(5), shall, upon

return to covered employment, be eligible to purchase retirement credit for the period between his or her date of resignation and the beginning of the term of office for which he or she was a candidate as a leave of absence without pay, as provided in subsection (1).

**History.**—s. 12, ch. 70-112; s. 10, ch. 74-302; s. 2, ch. 80-128; s. 8, ch. 83-76; s. 14, ch. 88-382; s. 776, ch. 95-147; s. 13, ch. 97-180; s. 11, ch. 98-138; s. 9, ch. 98-413; s. 12, ch. 2000-169; s. 8, ch. 2000-347; s. 21, ch. 2008-4; s. 20, ch. 2011-68; s. 2, ch. 2018-126.

#### **121.122 Renewed membership in system.—**

(1) Except as provided in s. 121.053, effective July 1, 1991, through June 30, 2010, any retiree of a state-administered retirement system who is initially reemployed in a regularly established position with a covered employer, including an elective public office that does not qualify for the Elected Officer's Class, shall be enrolled as a compulsory member of the Regular Class of the Florida Retirement System. Effective July 1, 1997, through June 30, 2010, any retiree of a state-administered retirement system who is initially reemployed in a position included in the Senior Management Service Class shall be enrolled as a compulsory member of the Senior Management Service Class of the Florida Retirement System as provided in s. 121.055. A retiree is entitled to receive an additional retirement benefit, subject to the following conditions:

(a) Such member must resatisfy the age and service requirements as provided in this chapter for initial membership under the system, unless such member elects to participate in the Senior Management Service Optional Annuity Program in lieu of the Senior Management Service Class, as provided in s. 121.055(6).

(b) Such member is not entitled to disability benefits as provided in s. 121.091(4).

(c) Such member must meet the reemployment after retirement limitations as provided in s. 121.091(9), as applicable.

(d) Upon renewed membership or reemployment of a retiree, the employer of such member shall pay the applicable employer contributions as required by ss. 112.363, 121.71, 121.74, and 121.76.

(e) Such member is entitled to purchase additional retirement credit in the Regular Class or the Senior Management Service Class, as applicable, for any postretirement service performed in a regularly established position as follows:

1. For regular class service prior to July 1, 1991, by paying the Regular Class applicable employee and employer contributions for the period being claimed, plus 4 percent interest compounded annually from first year of service claimed until July 1, 1975, and 6.5 percent interest compounded thereafter, until full payment is made to the Florida Retirement System Trust Fund; or

2. For Senior Management Service Class prior to June 1, 1997, as provided in s. 121.055(1)(j).

The contribution for postretirement service between July 1, 1985, and July 1, 1991, for which the reemployed retiree contribution was paid, shall be the difference between such contribution and the total applicable contribution for the period being claimed, plus interest.

The employer of such member may pay the applicable employer contribution in lieu of the member. If a member does not wish to claim credit for all of the postretirement service for which he or she is eligible, the service the member claims must be the most recent service.

(f) No creditable service for which credit was received, or which remained unclaimed, at retirement may be claimed or applied toward service credit earned following renewed membership. However, service earned as an elected officer with renewed membership in the Elected Officers' Class may be used in conjunction with creditable service earned under this section, provided the applicable vesting requirements and other existing statutory conditions required by this chapter are met.

(g) Notwithstanding any other limitations provided in this section, a participant of the State University System Optional Retirement Program, the State Community College Optional Retirement Program, or the Senior Management Service Optional Annuity Program who terminated employment and commenced receiving a distribution under the optional program, who initially renews membership as required by this section upon reemployment after retirement, and who had previously earned creditable Florida Retirement System service that was not included in any retirement benefit may include such previous service toward vesting and service credit in the second career benefit provided under renewed membership.

(h) A renewed member who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the maximum health insurance subsidy. Any additional subsidy due because of such additional credit may be received only at the time of payment of the second career retirement benefit. The total health insurance subsidy received by a retiree receiving benefits from initial and renewed membership may not exceed the maximum allowed in s. 112.363.

(2) Except as otherwise provided in subsections (3), (4), and (5), a retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, may not be enrolled as a renewed member.

(3) A retiree of the investment plan, the State University System Optional Retirement Program, the Senior Management Service Optional Annuity Program, or the State Community College System Optional Retirement Program who is reemployed with a covered employer in a regularly established position on or after July 1, 2017, shall be enrolled as a renewed member of the investment plan unless employed in a position eligible for participation in the State University System Optional Retirement Program as provided in subsection (4) or the State Community College System Optional Retirement Program as provided in subsection (5). The renewed member must satisfy the vesting requirements and other provisions of this chapter.

(a) A renewed member of the investment plan shall be enrolled in one of the following membership classes:

1. In the Regular Class, if the position does not meet the requirements for membership under s. 121.0515, s. 121.053, or s. 121.055.

2. In the Special Risk Class, if the position meets the requirements of s. 121.0515.

3. In the Elected Officers' Class, if the position meets the requirements of s. 121.053.

4. In the Senior Management Service Class, if the position meets the requirements of s. 121.055.

(b) Creditable service, including credit toward the retiree health insurance subsidy provided in s. 112.363, does not accrue for a renewed member's employment in a regularly established position with a covered employer from July 1, 2010, through June 30, 2017.

(c) Employer and employee contributions, interest, earnings, or any other funds may not be paid into a renewed member's investment plan account for any employment in a regularly established position with a covered employer on or after July 1, 2010, through June 30, 2017, by the renewed member or the employer on behalf of the renewed member.

(d) To be eligible to receive a retirement benefit, the renewed member must satisfy the vesting requirements in s. 121.4501(6).

(e) The renewed member is ineligible to receive disability benefits as provided in s. 121.091(4) or s. 121.591(2).

(f) The renewed member is subject to the limitations on reemployment after retirement provided in s. 121.091(9), as applicable.

(g) The renewed member must satisfy the requirements for termination from employment provided in s. 121.021(39).

(h) Upon renewed membership or reemployment of a retiree, the employer and the renewed member shall pay the applicable employer and employee contributions required under ss. 112.363, 121.71, 121.74, and 121.76. The contributions are payable only for employment and salary earned in a regularly established position with a covered employer on or after July 1, 2017. The employer and employee contributions shall be transferred to the investment plan and placed in a default fund as designated by the state board. The renewed member may move the contributions once an account is activated in the investment plan.

(i) A renewed member who earns creditable service under the investment plan and who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the subsidy. Such credit may be earned only for employment in a regularly established position with a covered employer on or after July 1, 2017. Any additional subsidy due because of additional credit may be received only at the time of paying the second career retirement benefit. The total health insurance subsidy received by a retiree receiving benefits from initial and renewed membership may not exceed the maximum allowed under s. 112.363.

(j) Notwithstanding s. 121.4501(4)(f), the renewed member is not eligible to elect membership in the pension plan.

(4) A retiree of the investment plan, the State University System Optional Retirement Program, the

Senior Management Service Optional Annuity Program, or the State Community College System Optional Retirement Program who is reemployed on or after July 1, 2017, in a regularly established position eligible for participation in the State University System Optional Retirement Program shall become a renewed member of the optional retirement program. The renewed member must satisfy the vesting requirements and other provisions of this chapter. Once enrolled, a renewed member remains enrolled in the optional retirement program while employed in an eligible position for the optional retirement program. If employment in a different covered position results in the renewed member's enrollment in the investment plan, the renewed member is no longer eligible to participate in the optional retirement program unless employed in a mandatory position under s. 121.35.

(a) The renewed member is subject to the limitations on reemployment after retirement provided in s. 121.091(9), as applicable.

(b) The renewed member must satisfy the requirements for termination from employment provided in s. 121.021(39).

(c) Upon renewed membership or reemployment of a retiree, the employer and the renewed member shall pay the applicable employer and employee contributions required under s. 121.35.

(d) Employer and employee contributions, interest, earnings, or any other funds may not be paid into a renewed member's optional retirement program account for any employment in a regularly established position with a covered employer on or after July 1, 2010, through June 30, 2017, by the renewed member or the employer on behalf of the renewed member.

(e) Notwithstanding s. 121.4501(4)(f), the renewed member is not eligible to elect membership in the pension plan.

(5) A retiree of the investment plan, the State University System Optional Retirement Program, the Senior Management Service Optional Annuity Program, or the State Community College System Optional Retirement Program who is reemployed on or after July 1, 2017, in a regularly established position eligible for participation in the State Community College System Optional Retirement Program shall become a renewed member of the optional retirement program. The renewed member must satisfy the eligibility requirements of this chapter and s. 1012.875 for the optional retirement program. Once enrolled, a renewed member remains enrolled in the optional retirement program while employed in an eligible position for the optional retirement program. If employment in a different covered position results in the renewed member's enrollment in the investment plan, the renewed member is no longer eligible to participate in the optional retirement program.

(a) The renewed member is subject to the limitations on reemployment after retirement provided in s. 121.091(9), as applicable.

(b) The renewed member must satisfy the requirements for termination from employment provided in s. 121.021(39).

(c) Upon renewed membership or reemployment of a retiree, the employer and the renewed member shall pay the applicable employer and employee contributions required under ss. 121.051(2)(c) and 1012.875.

(d) Employer and employee contributions, interest, earnings, or any other funds may not be paid into a renewed member's optional retirement program account for any employment in a regularly established position with a covered employer on or after July 1, 2010, through June 30, 2017, by the renewed member or the employer on behalf of the renewed member.

(e) Notwithstanding s. 121.4501(4)(f), the renewed member is not eligible to elect membership in the pension plan.

**History.**—s. 14, ch. 90-274; s. 8, ch. 92-122; s. 9, ch. 93-193; s. 6, ch. 93-285; s. 14, ch. 97-180; s. 12, ch. 98-138; s. 10, ch. 98-413; s. 7, ch. 99-9; s. 12, ch. 99-392; s. 21, ch. 2000-151; s. 12, ch. 2009-209; s. 7, ch. 2012-222; s. 10, ch. 2017-88.

**121.125 Credit for workers' compensation payment periods.**—A member of the retirement system created by this chapter who has been eligible or becomes eligible to receive workers' compensation payments for an injury or illness occurring during his or her employment while a member of any state retirement system shall, upon return to active employment with a covered employer for 1 calendar month or upon approval for disability retirement in accordance with s. 121.091(4), receive full retirement credit for the period prior to such return to active employment or disability retirement for which the workers' compensation payments were received. However, a member may not receive retirement credit for any such period occurring after the earlier of the date of maximum medical improvement as defined in s. 440.02 or the date termination has occurred as defined in s. 121.021(39). The employer of record at the time of the workers' compensation injury or illness shall make the required employer and employee retirement contributions based on the member's rate of monthly compensation immediately prior to his or her receiving workers' compensation payments for retirement credit received by the member. The employer of record at the time of the workers' compensation injury or illness shall be assessed by the division a penalty of 1 percent of the contributions on all contributions not paid on the first payroll report after the member becomes eligible to receive credit. This delinquent assessment may not be waived.

**History.**—s. 2, ch. 72-347; s. 57, ch. 79-40; s. 15, ch. 90-274; s. 9, ch. 92-122; s. 777, ch. 95-147; s. 55, ch. 99-2; s. 7, ch. 2002-194; s. 21, ch. 2011-68.

**121.131 Benefits exempt from taxes and execution.**—The benefits accrued to any person under the provisions of this chapter and the accumulated contributions, securities, or other investments in the trust funds hereby created are exempt from any state, county, or municipal tax of the state and shall not be subject to assignment, execution, or attachment or to any legal process whatsoever.

**History.**—s. 13, ch. 70-112.

**121.133 Cancellation of uncashed warrants.**—Notwithstanding the provisions of s. 17.26 or s. 717.123 to the contrary, if any state warrant issued by the Chief Financial Officer for the payment of retirement benefits

from the Florida Retirement System Trust Fund, or any other pension trust fund administered by the department, is not presented for payment within 1 year after the last day of the month in which it was originally issued, the Chief Financial Officer shall cancel the benefit warrant and credit the amount of the warrant to the Florida Retirement System Trust Fund or other pension trust fund administered by the department, as appropriate. The department may provide for issuance of a replacement warrant when deemed appropriate.

**History.**—s. 12, ch. 98-413; s. 40, ch. 99-255; s. 143, ch. 2003-261.

**121.135 Annual report to Legislature concerning state-administered retirement systems.**—The department shall make to each regular session of the Legislature a written report on the operation and condition of the state-administered retirement systems.

**History.**—s. 3, ch. 72-345; s. 2, ch. 77-286; s. 21, ch. 79-183; s. 35, ch. 84-254; s. 58, ch. 92-279; s. 55, ch. 92-326; s. 27, ch. 94-249; s. 41, ch. 99-255.

**121.136 Annual benefit statement to members.** Each year the department shall provide each active member of the Florida Retirement System with 5 or more years of creditable service an annual statement of benefits that provides the member with basic data about the member's retirement account. At a minimum, it must include the member's retirement plan, accrued service credit, and an estimate of retirement benefits.

**History.**—s. 16, ch. 90-274; s. 59, ch. 92-279; s. 55, ch. 92-326; s. 28, ch. 94-249; s. 1427, ch. 95-147; s. 42, ch. 99-255; s. 13, ch. 2009-209.

**121.141 Appropriation.—**

(1) There is annually appropriated from the System Trust Fund a sufficient amount to make such payments as are provided in part I of this chapter.

(2) The funds required to provide payments to beneficiaries of members who die subsequent to the completion of 20 years of creditable service, as specified in s. 121.091(3), shall be annually appropriated from the System Trust Fund.

**History.**—s. 14, ch. 70-112; s. 3, ch. 80-128; s. 11, ch. 2004-234.

**121.151 Investments.**—The Board of Administration, created by authority of the State Constitution, shall invest and reinvest available funds of the System Trust Fund in accordance with the provisions of ss. 215.44-215.53.

**History.**—s. 15, ch. 70-112; s. 7, ch. 81-295.

**121.161 References to other laws include amendments.**—References in this chapter to state or federal laws or agreements are intended to include such laws as they now exist or may hereafter be amended.

**History.**—s. 16, ch. 70-112; s. 22, ch. 2011-68.

**121.181 Effective date.**—For the purpose of activating and implementing the Florida Retirement System this chapter shall take effect on December 1, 1970, but for all other purposes it shall take effect July 1, 1970.

**History.**—s. 19, ch. 70-112.

**121.1815 Special pensions to individuals; administration of laws by Department of Management Services.**—All powers, duties, and functions related to the administration of laws providing special pensions to

individuals, including chapter 18054, Laws of Florida, 1937; chapter 26788, Laws of Florida, 1951, as amended by chapter 57-871, Laws of Florida; chapter 26836, Laws of Florida, 1951; and chapter 63-953, Laws of Florida, are vested in the department. All laws hereinafter enacted by the Legislature pertaining to special pensions for individuals shall be administered by the department, unless contrary provisions are contained in such law. Upon the death of any person receiving a monthly pension under this section, the monthly pension shall be paid through the last day of the month of death and shall terminate on that date, unless contrary provisions are contained in the special pension law.

**History.**—s. 31, ch. 69-106; s. 4, ch. 71-355; s. 2, ch. 72-295; s. 3, ch. 72-345; s. 1, ch. 75-256; s. 2, ch. 77-124; s. 4, ch. 80-130; s. 326, ch. 92-279; s. 55, ch. 92-326; s. 29, ch. 94-249; s. 43, ch. 99-255.

**121.182 Retirement annuities authorized for city and county personnel.**—Municipalities and counties are authorized to purchase annuities for all municipal and county personnel with 25 or more years of creditable service who have reached age 50 and have applied for retirement under the Florida Retirement System. No such annuity shall provide for more than the total difference in retirement income between the retirement benefit based on average monthly compensation and creditable service as of the member's early retirement date and the early retirement benefit. Municipalities and counties may also purchase annuities for members of the Florida Retirement System who have out-of-state service in another state or country which is documented as valid by the appropriate city or county. Such annuities may be based on no more than 5 years of out-of-state service and may equal, but not exceed, the benefits that would be payable under the Florida Retirement System if credit for out-of-state service was authorized under that system. Municipalities and counties are authorized to invest funds, purchase annuities, or provide local supplemental retirement programs for purposes of providing annuities for city or county personnel. All retirement annuities shall comply with s. 14, Art. X of the State Constitution.

**History.**—s. 10, ch. 96-368; s. 1, ch. 2005-135; s. 23, ch. 2011-68.

**121.1905 Division of Retirement; creation.**—There is created the Division of Retirement within the Department of Management Services.

**History.**—s. 30, ch. 94-249; s. 44, ch. 99-255; s. 14, ch. 2009-209.

**121.191 Special acts prohibited.**—After July 1, 1972, there shall not be enacted any special act or general law of local application which proposes to amend, alter, or contravene the provisions of any state-administered retirement system or any state-supported retirement system established by general law.

**History.**—s. 1, ch. 72-388.

**121.192 State retirement actuary.**—The department may employ an actuary. Such actuary shall, together with such other duties as the secretary may assign, be responsible for:

(1) Advising the secretary on actuarial matters of the state retirement systems.



(2) Making periodic valuations of the retirement systems.

(3) Providing actuarial analyses to the Legislature concerning proposed changes in the retirement systems.

(4) Assisting the secretary in developing a sound and modern retirement system.

**History.**—s. 11, ch. 74-302; s. 35, ch. 84-254; s. 778, ch. 95-147; s. 45, ch. 99-255.

#### **121.193 External compliance audits.—**

(1) The department shall conduct audits of the payroll and personnel records of participating agencies. These audits shall be made to determine the accuracy of reports submitted to the department and to assess the degree of compliance with applicable statutes, rules, and coverage agreements. Audits shall be scheduled on a regular basis, as the result of concerns known to exist at an agency, or as a followup to ensure agency action was taken to correct deficiencies found in an earlier audit.

(2) Upon request, participating agencies shall furnish the department with information and documents that the department requires to conduct the audit. The department may prescribe by rule the documents that may be requested.

(3) The department shall review the agency's operations concerning retirement and social security coverage. Preliminary findings shall be discussed with agency personnel at the close of the audit. An audit report of findings and recommendations shall be submitted to department management and an audit summary letter shall be submitted to the agency noting any concerns and necessary corrective action.

**History.**—s. 13, ch. 98-138; s. 46, ch. 99-255.

#### **121.22 State Retirement Commission; creation; membership; compensation.—**

(1) There is created within the Department of Management Services a State Retirement Commission composed of five members: Two members who are retired under a state-supported retirement system administered by the department; two members who are active members of a state-supported retirement system that is administered by the department; and one member who is neither a retiree, beneficiary, or member of a state-supported retirement system administered by the department. Each member shall have a different occupational background from the other members.

(2) Appointments to the commission shall be made by the Governor, subject to confirmation by the Senate. Members shall be appointed for 4-year terms. Each member shall serve until a successor is appointed and confirmed, and a member may be appointed to succeed himself or herself. Should a vacancy occur, it shall be filled by appropriate appointment by the Governor for the period of the unexpired term.

(3) No person shall serve as a member who holds an elective public office of the state or any political subdivision thereof or who holds any office in, or serves as an agent for, a political party. No person shall be appointed to the commission who has not been a citizen of Florida for at least 3 years immediately prior to the appointment.

(4) The Governor may suspend a member of the commission only for cause, subject to removal or reinstatement by the Senate.

**History.**—s. 1, ch. 75-248; s. 61, ch. 81-259; s. 1, ch. 82-46; ss. 16, 17, ch. 86-149; s. 1, ch. 92-63; s. 327, ch. 92-279; s. 55, ch. 92-326; s. 31, ch. 94-249; s. 1428, ch. 95-147; s. 47, ch. 99-255; s. 47, ch. 2001-89; s. 22, ch. 2002-1; s. 2, ch. 2005-134.

**121.23 Disability retirement and special risk membership applications; Retirement Commission; powers and duties; judicial review.—**The provisions of this section apply to all proceedings in which the administrator has made a written final decision on the merits respecting applications for disability retirement, reexamination of retired members receiving disability benefits, applications for special risk membership, and reexamination of special risk members in the Florida Retirement System. The jurisdiction of the State Retirement Commission under this section shall be limited to written final decisions of the administrator on the merits.

(1) In accordance with the rules of procedure adopted by the Department of Management Services, the administrator shall:

(a) Give reasonable notice of his or her proposed action, or decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

(b) Give affected members, or their counsel, an opportunity to present to the division written evidence in opposition to the proposed action or refusal to act or a written statement challenging the grounds upon which the administrator has chosen to justify his or her action or inaction.

(c) If the objections of the member are overruled, provide a written explanation within 21 days.

(2) A member shall be entitled to a hearing before the State Retirement Commission pursuant to ss. 120.569 and 120.57(1) on the merits of any written adverse decision of the administrator, if he or she files with the commission a written request for such hearing within 21 days after receipt of such written decision from the administrator. For the purpose of such hearings, the commission shall be an "agency head" as defined by s. 120.52.

(a) The commission may issue orders as a result of the hearing that are binding on all parties to the dispute and may order any action that it deems appropriate. Any disability retirement order of the commission that sustains the application of the member may include an amount, to be determined by the commission, for reasonable attorney's fees and taxable costs, which shall be calculated in accordance with the statewide uniform guidelines for taxation of costs in civil actions. The amount of the attorney's fees may not exceed 50 percent of the initial yearly benefit awarded under s. 121.091(4). In cases involving disability retirement, the commission shall require the member to present substantial competent medical evidence that meets the requirements of s. 121.091(4)(c)2. and 3., and may require vocational evidence, before awarding disability retirement benefits.

(b) Any person who fails to appear in response to a subpoena, answer any question, or produce any

evidence pertinent to any hearing or who knowingly gives false testimony therein commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The exercise by the State Retirement Commission of the powers, duties, and functions prescribed by this section shall be reviewable by the district court of appeal.

(4) The exercise by the State Retirement Commission of the powers, duties, and functions prescribed by this section shall be reviewable by the judiciary on the grounds that:

(a) The commission did not afford a fair and equitable hearing in accordance with chapter 120;

(b) The decision of the commission was not in accordance with existing statutes or rules and regulations promulgated thereunder; or

(c) The decision of the commission was not based on substantial evidence.

The court shall not, however, substitute its judgment for that of the commission as to the weight of the evidence on any disputed finding of fact where the decision of the commission was supported by substantial evidence; nor shall the court substitute its judgment for that of the commission on an issue of discretion.

**History.**—s. 1, ch. 75-248; s. 5, ch. 78-95; s. 1, ch. 82-46; s. 2, ch. 83-197; ss. 16, 17, ch. 86-149; s. 17, ch. 90-274; s. 1, ch. 92-63; s. 328, ch. 92-279; s. 55, ch. 92-326; s. 32, ch. 94-249; s. 1429, ch. 95-147; s. 19, ch. 96-410; s. 15, ch. 97-180; s. 48, ch. 99-255; s. 15, ch. 2009-209.

**121.231 Attorney's fees and costs under s. 121.23(2)(a); funding.**—There is appropriated from the Florida Retirement System Trust Fund sufficient funds, not to exceed \$300,000 annually, to pay attorney's fees and taxable costs as directed by the State Retirement Commission in accordance with s. 121.23(2)(a).

**History.**—s. 22, ch. 97-180.

**121.24 Conduct of commission business; legal and other assistance; compensation.**—

(1) The commission shall conduct its business within the following guidelines:

(a) For purposes of hearing appeals under s. 121.23, the commission may meet in panels of no fewer than three members. A quorum shall consist of three members. The concurring vote of a majority of the members present is required to reach a decision, issue orders, and conduct the business of the commission.

(b) The commission shall elect a chair and such other officers as it deems necessary. The chair or the chair's designee shall conduct the meetings and hearings of the commission and shall take whatever action is necessary to ensure that the business of the commission is conducted in an equitable, orderly, and expeditious manner. All parties shall abide by the decisions of the chair or the chair's designee, unless he or she is overruled by a majority of members present.

(2) Legal counsel for the commission may be provided by the Department of Legal Affairs or by the Department of Management Services, with the concurrence of the commission, and shall be paid by the Department of Management Services from the appropriate funds.

(3) The Department of Management Services shall provide timely and appropriate training for newly appointed members of the commission. Such training shall be designed to acquaint new members of the commission with the duties and responsibilities of the commission.

(4) The Department of Management Services shall furnish administrative and secretarial assistance to the commission and shall provide a place where the commission may hold its meetings.

(5) The State Retirement Commission has the authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon the commission.

(6) The members of the commission shall be paid a stipend of \$100 for each day spent on the work of the commission. Additionally, each member shall receive per diem and travel expenses as provided in s. 112.061. The official headquarters of each member, for the purpose of calculating per diem and travel expenses, shall be his or her permanent home address. Members of a state-administered retirement system who are appointed to the commission shall have their work on the commission considered as part of their regular job assignments and shall not be required to take leave while engaged in the business of the commission. The receipt of such stipend shall have no effect on the retirement benefits of a retired member of the commission.

**History.**—s. 1, ch. 75-248; s. 1, ch. 82-46; s. 9, ch. 83-76; ss. 15, 16, 17, ch. 86-149; s. 13, ch. 90-502; s. 1, ch. 92-63; s. 329, ch. 92-279; s. 55, ch. 92-326; s. 33, ch. 94-249; s. 1430, ch. 95-147; s. 49, ch. 99-255; s. 13, ch. 99-392; s. 3, ch. 2005-134; s. 16, ch. 2009-209.

**121.30 Statements of purpose and intent and other provisions required for qualification under the Internal Revenue Code of the United States.**—

Any other provisions in this chapter to the contrary notwithstanding, it is specifically provided that:

(1) The purpose of this chapter is to provide pension benefits for the exclusive benefit of the member employees or their beneficiaries.

(2) No part of the principal or income of the trust fund created hereunder shall be used or diverted for purposes other than for the exclusive benefit of the member employees or their beneficiaries and for the payment of administrative cost.

(3) Forfeitures, if any, shall not be applied to increase the benefits any member employee would otherwise receive under this chapter.

(4) Upon termination or partial termination, upon discontinuance of contributions, abandonment, or merger, or upon consolidation or amendment of this chapter, the rights of all affected employees to benefits accrued as of the date of any of the foregoing events, or the amounts credited to the account of any member employee, shall be and continue thereafter to be nonforfeitable except as otherwise provided by law.

(5) No benefit payable hereunder for any limitation year shall exceed the maximum amount, including cost-of-living adjustments, allowable by law for qualified pension plans under applicable provisions of the Internal Revenue Code of the United States. In the event of any participation of a Florida Retirement System

member in any other plan that is maintained by the participating employer, benefits that accrue under the Florida Retirement System shall be considered primary for any aggregate limitation applicable under s. 415 of the Internal Revenue Code.

(6)(a) When computing benefits accrued or contributions to be made on behalf of any person who first becomes a member or participant on or after July 1, 1996, compensation taken into account for any plan year shall not include any amounts in excess of the s. 401(a)(17), Internal Revenue Code limitation (as amended by the Omnibus Budget Reconciliation Act of 1993), which limitation of \$150,000 effective July 1996, shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by s. 401(a)(17)(B) of the Internal Revenue Code.

(b) When computing benefits accrued or contributions to be made on behalf of any person who first became a member or participant prior to July 1, 1996, compensation for all plan years beginning on or after July 1, 1990, shall not include any amounts in excess of the compensation limitation (originally \$200,000) established by s. 401(a)(17) of the Internal Revenue Code prior to the Omnibus Budget Reconciliation Act of 1993, which limitation shall be adjusted for changes in the cost of living since 1989, in the manner provided by s. 401(a)(17) of the Internal Revenue Code of 1991. This limitation, which has been part of the Florida Retirement System since plan years beginning on or after July 1, 1990, shall be adjusted as required by federal law for qualified government plans.

(7) Any provision of this chapter relating to an optional annuity or retirement program must be construed and administered in such manner that such program will qualify as a qualified pension plan under applicable provisions of the Internal Revenue Code of the United States.

(8) The provisions of this section are declaratory of the legislative intent upon the original enactment of this chapter and are hereby deemed to have been in effect from such date.

(9) The department may adopt any rule necessary to accomplish the purpose of the section which is not inconsistent with this chapter.

**History.**—s. 1, ch. 78-108; s. 3, ch. 89-126; s. 11, ch. 96-368; s. 16, ch. 97-180; s. 11, ch. 98-413; s. 50, ch. 99-255.

### **121.35 Optional retirement program for the State University System.—**

(1) **OPTIONAL RETIREMENT PROGRAM ESTABLISHED.**—The Department of Management Services shall establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for eligible members of the State University System who elect to participate in the program. The benefits to be provided for or on behalf of participants in such optional retirement program shall be provided through individual contracts or individual certificates issued for group annuity or other contracts, which may be fixed, variable, or a combination thereof, in accordance with s. 403(b) of the Internal Revenue Code. Any individual contract or certificate shall state the annuity plan on its face page, and shall include, but

not be limited to, a statement of ownership, the contract benefits, annuity income options, limitations, expense charges, and surrender charges, if any. The state shall contribute, as provided in this section, toward the purchase of such optional benefits.

### **(2) ELIGIBILITY FOR PARTICIPATION IN OPTIONAL PROGRAM.—**

(a) Participation in the optional retirement program provided by this section shall be limited to persons who are otherwise eligible for membership or renewed membership in the Florida Retirement System and who are employed in one of the following State University System positions:

1. Positions classified as instructional and research faculty which are exempt from the career service under the provisions of s. 110.205(2)(d).

2. Positions classified as administrative and professional which are exempt from the career service under the provisions of s. 110.205(2)(d).

3. The Chancellor and the university presidents.

(b) For purposes of this section, both the appointees and employees are referred to as “employees,” and the “employer” of an appointee or employee is the individual institution within the State University System or the Board of Governors of the State University System, whichever is appropriate with respect to the particular employee or appointee.

(c) For purposes of this section, the Department of Management Services is referred to as the “department.”

(d) For purposes of this section, the authority granted to the Board of Governors of the State University System may be exercised by the Board of Governors or by the Chancellor of the State University System.

### **(3) ELECTION OF OPTIONAL PROGRAM.—**

(a) Any eligible employee who is employed on or before March 1, 1984, may elect to participate in the optional retirement program in lieu of participation in the Florida Retirement System. Such election shall be made in writing and filed with the division and the personnel officer of the employer on or before June 1, 1984. Upon such election, participation in the optional program will take effect July 1, 1984, and election to so participate will terminate the membership of the employee in the Florida Retirement System. Any eligible employee who is employed on or before March 1, 1984, and who fails to make an election to participate in the optional program by June 1, 1984, shall be deemed to have elected to retain membership in the Florida Retirement System.

(b)1. Any employee who becomes eligible to participate in the optional retirement program by reason of initial employment commencing after March 1, 1984, but before January 1, 1993, may, within 90 days after the date of commencement of employment, elect to participate in the optional program. Such election shall be made in writing and filed with the personnel officer of the employer. The eligible employees described in this subparagraph shall be enrolled in the Florida Retirement System at the commencement of employment, with the exception of those employees who file an election with the personnel officer of the employer prior

to the submission of the initial payroll for the employee. For such employees, participation will be effective on the first day of employment or on July 1, 1984, whichever is later. If an eligible employee, as described in this subparagraph, files an election to participate in the optional program within 90 days after the commencement of employment, but after the submission by the employer of the initial payroll for the employee, the employee's participation in the optional program will not be effective until the first day of the month for which a full month's employer contribution may be made, or until July 1, 1984, whichever is later. Any eligible employee who does not within 90 days after commencement of such employment elect to participate in the optional program shall be deemed to have elected to retain membership in the Florida Retirement System.

2. Any employee who after March 1, 1984, but before January 1, 1993, becomes eligible to participate in the optional program by reason of a change in status due to the subsequent designation of the employee's position as one of those specified in paragraph (2)(a) or due to the employee's appointment, promotion, transfer, or reclassification to a position specified in paragraph (2)(a) may elect to participate in the optional program. Such employee shall be notified by the employer of the change in his or her eligibility status. Such employee may, within 90 days after the date of such notification, file with the personnel officer of the employer an election in writing to participate in the optional program in lieu of participation in the Florida Retirement System. Upon such election, participation in the optional program will be effective on the first day of the month for which a full month's employer contribution may be made or on July 1, 1984, whichever is later. Election to so participate shall terminate the membership of the employee in the Florida Retirement System. Any eligible employee who does not within 90 days after notification of his or her eligibility to participate in the optional program elect to participate in the program shall be deemed to have elected to retain membership in the Florida Retirement System.

(c) Any employee who becomes eligible to participate in the optional retirement program on or after January 1, 1993, shall be a compulsory participant of the program unless such employee elects membership in the Florida Retirement System. Such election shall be made in writing and filed with the personnel officer of the employer. Any eligible employee who fails to make such election within the prescribed time period shall be deemed to have elected to participate in the optional retirement program.

1. Any employee whose optional retirement program eligibility results from initial employment shall be enrolled in the program at the commencement of employment. If, within 90 days after commencement of employment, the employee elects membership in the Florida Retirement System, such membership shall be effective retroactive to the date of commencement of employment.

2. Any employee whose optional retirement program eligibility results from a change in status due to the subsequent designation of the employee's position as one of those specified in paragraph (2)(a) or due to the

employee's appointment, promotion, transfer, or reclassification to a position specified in paragraph (2)(a) shall be enrolled in the optional retirement program upon such change in status and shall be notified by the employer of such action. If, within 90 days after the date of such notification, the employee elects to retain membership in the Florida Retirement System, such continuation of membership shall be retroactive to the date of the change in status.

3. Notwithstanding the provisions of this paragraph, effective July 1, 1997, any employee who is eligible to participate in the Optional Retirement Program and who fails to execute a contract with one of the approved companies and to notify the department in writing as provided in subsection (4) within 90 days after the date of eligibility shall be deemed to have elected membership in the Florida Retirement System, except as provided in s. 121.051(1)(a). This provision shall also apply to any employee who terminates employment in an eligible position before executing the required annuity contract and notifying the department. Such membership shall be retroactive to the date of eligibility, and all appropriate contributions shall be transferred to the Florida Retirement System Trust Fund and the Health Insurance Subsidy Trust Fund.

(d) Participants shall be fully and immediately vested in the optional retirement program only upon execution of a contract.

(e) The election by an eligible employee to participate in the optional retirement program shall be irrevocable for so long as the employee continues to meet the eligibility requirements specified in subsection (2), except as provided in paragraph (h) or paragraph (i). In the event that an employee participates in the optional retirement program for 90 days or more and is subsequently employed in an administrative or professional position which has been determined by the department, under subparagraph (2)(a)2., to be not otherwise eligible for participation in the optional retirement program, the employee shall continue participation in the optional program so long as the employee meets the other eligibility requirements for the program, except as provided in paragraph (h) or paragraph (i).

(f) If an employee becomes ineligible to continue participation in the optional retirement program under subsection (2), the employee shall thereafter participate in the Florida Retirement System if he or she is otherwise eligible.

(g) An eligible employee who is a member of the Florida Retirement System at the time of election to participate in the optional retirement program shall retain all retirement service credit earned under the Florida Retirement System at the rate earned. Additional service credit in the Florida Retirement System may not be earned while the employee participates in the optional program, and the employee is not eligible for disability retirement under the Florida Retirement System. An eligible employee may transfer from the Florida Retirement System to his or her accounts under the State University System Optional Retirement Program a sum representing the present value of the employee's accumulated benefit obligation under the pension plan for any service credit accrued from the

employee's first eligible transfer date to the optional retirement program through the actual date of such transfer, if such service credit was earned from July 1, 1984, through December 31, 1992. The present value of the employee's accumulated benefit obligation shall be calculated as described in s. 121.4501(3). Upon transfer, all service credit earned under the pension plan during this period is nullified for purposes of entitlement to a future benefit under the pension plan.

(h) A participant in the optional retirement program may not participate in more than one state-administered retirement system, plan, or class simultaneously. Except as provided in s. 121.052(6)(d), a participant who is or becomes dually employed in two or more positions covered by the Florida Retirement System, one of which is eligible for the optional program and one of which is not, may remain a member of the optional program and contributions shall be paid as required only on the salary earned in the position eligible for the optional program during the period of dual employment; or, within 90 days after becoming dually employed, he or she may elect membership in the Regular Class of the Florida Retirement System in lieu of the optional program and contributions shall be paid as required on the total salary received for all employment. At retirement, the average final compensation used to calculate any benefits for which the member becomes eligible under the Florida Retirement System must be based on all salary reported for both positions during such period of dual employment. If the member ceases to be dually employed, he or she may, within 90 days, elect to remain in the Florida Retirement System class for which he or she is eligible or to again become a participant in the optional retirement program. Failure to elect membership in the optional program within 90 days shall result in compulsory membership in the Florida Retirement System, except that a member filling a faculty position at a college that has a faculty practice plan at the University of Florida, at the Medical Center at the University of South Florida, or other state university shall again participate in the optional retirement program as required in s. 121.051(1)(a).

(i) Effective January 1, 2008, through December 31, 2008, except for an employee who is a mandatory participant of the State University System Optional Retirement Program, an employee who has elected to participate in the State University System Optional Retirement Program shall have one opportunity, at the employee's discretion, to transfer from this program to the Florida Retirement System Pension Plan or to the investment plan, subject to the terms of the applicable contracts of the State University System Optional Retirement Program.

1. If the employee chooses to move to the investment plan, any contributions, interest, and earnings creditable to the employee under the State University System Optional Retirement Program must be retained by the employee in the State University System Optional Retirement Program, and the applicable provisions of s. 121.4501(4) shall govern the election.

2. If the employee chooses to move to the pension plan of the Florida Retirement System, the employee shall receive service credit equal to his or her years of

service under the State University System Optional Retirement Program.

a. The cost for such credit must be in an amount representing the actuarial accrued liability for the affected period of service. The cost must be calculated using the discount rate and other relevant actuarial assumptions that were used to value the Florida Retirement System Pension Plan liabilities in the most recent actuarial valuation. The calculation must include any service already maintained under the pension plan in addition to the years under the State University System Optional Retirement Program. The actuarial accrued liability of any service already maintained under the pension plan must be applied as a credit to total cost resulting from the calculation. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary.

b. The employee must transfer from his or her State University System Optional Retirement Program account, and from other employee moneys as necessary, a sum representing the actuarial accrued liability immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and service in the State University System Optional Retirement Program.

#### (4) CONTRIBUTIONS.—

(a)1. Through June 30, 2001, each employer shall contribute on behalf of each member of the optional retirement program an amount equal to the normal cost portion of the employer retirement contribution which would be required if the employee were a regular member of the Florida Retirement System Pension Plan, plus the portion of the contribution rate required in s. 112.363(8) that would otherwise be assigned to the Retiree Health Insurance Subsidy Trust Fund.

2. Effective July 1, 2001, through June 30, 2011, each employer shall contribute on behalf of each member of the optional retirement program an amount equal to 10.43 percent of the employee's gross monthly compensation.

3. Effective July 1, 2011, through June 30, 2012, each member of the optional retirement program shall contribute an amount equal to the employee contribution required in s. 121.71(3). The employer shall contribute on behalf of each such member an amount equal to the difference between 10.43 percent of the employee's gross monthly compensation and the amount equal to the employee's required contribution based on the employee's gross monthly compensation.

4. Effective July 1, 2012, each member of the optional retirement program shall contribute an amount equal to the employee contribution required in s. 121.71(3). The employer shall contribute on behalf of each such member an amount equal to the difference between 8.15 percent of the employee's gross monthly compensation and the amount equal to the employee's required contribution based on the employee's gross monthly compensation.

5. The payment of the contributions, including contributions by the employee, shall be made by the employer to the department, which shall forward the contributions to the designated company or companies contracting for payment of benefits for members of the

program. However, such contributions paid on behalf of an employee described in paragraph (3)(c) may not be forwarded to a company and do not begin to accrue interest until the employee has executed a contract and notified the department. The department shall deduct an amount from the contributions to provide for the administration of this program.

(b) Each employer shall contribute on behalf of each member of the optional retirement program an amount equal to the unfunded actuarial accrued liability portion of the employer contribution which would be required for members of the Florida Retirement System. This contribution shall be paid to the department for transfer to the Florida Retirement System Trust Fund.

(c) An Optional Retirement Program Trust Fund shall be established in the State Treasury and administered by the department to make payments to the provider companies on behalf of optional retirement program members, and to transfer the unfunded liability portion of the state optional retirement program contributions to the Florida Retirement System Trust Fund.

(d) Contributions required for social security by each employer and each employee, in the amount required for social security coverage as now or hereafter may be provided by the federal Social Security Act, shall be maintained for each member of the optional retirement program and are in addition to the retirement contributions specified in this subsection.

(e) Each member of the optional retirement program who has executed a contract may contribute by way of salary reduction or deduction a percentage amount of the employee's gross compensation not to exceed the percentage amount contributed by the employer to the optional program, but such contribution may not exceed federal limitations. Payment of the employee's contributions shall be made by the financial officer of the employer to the division which shall forward the contributions to the designated company or companies contracting for payment of benefits for members of the program. A member may not make, through salary reduction, any voluntary employee contributions to any other plan under s. 403(b) of the Internal Revenue Code, with the exception of a custodial account under s. 403(b)(7) of the Internal Revenue Code, until he or she has made an employee contribution to his or her optional program equal to the employer contribution. An employee is responsible for monitoring his or her individual tax-deferred income to ensure he or she does not exceed the maximum deferral amounts permitted under the Internal Revenue Code.

(f) The Optional Retirement Trust Fund may accept for deposit into member contracts contributions in the form of rollovers or direct trustee-to-trustee transfers by or on behalf of members who are reasonably determined by the department to be eligible for rollover or transfer to the optional retirement program pursuant to the Internal Revenue Code if such contributions are made in accordance with rules adopted by the department. Such contributions shall be accounted for in accordance with any applicable requirements of the Internal Revenue Code and department rules.

(g) Effective July 1, 2008, for purposes of paragraph (a) and notwithstanding s. 121.021(22)(b)1., the term

"employee's gross monthly compensation" includes salary payments made to eligible clinical faculty from a state university using funds provided by a faculty practice plan authorized by the Board of Governors of the State University System if:

1. There is no employer contribution from the state university to any other retirement program with respect to such salary payments; and

2. The employer contribution on behalf of a member of the optional retirement program with respect to such salary payments is made using funds provided by the faculty practice plan.

(5) BENEFITS.—

(a) Benefits are payable under the optional retirement program only to vested members participating in the program, or their beneficiaries as designated by the member in the contract with a provider company, and such benefits shall be paid only by the designated company in accordance with s. 403(b) of the Internal Revenue Code and the terms of the annuity contract or investment contracts applicable to the member. A benefit under the optional retirement program is a distribution requested by the member or surviving beneficiary funded in part or in whole by employer or required employee contributions, plus earnings, and includes rolling a distribution over to another qualified plan. Benefits accrue in individual accounts that are member-directed, portable, and funded by employer and employee contributions and the earnings thereon. The member must be terminated for 3 calendar months from all employment relationships with all Florida Retirement System employers to begin receiving the benefit. The department may authorize a distribution of up to 10 percent of the member's account after being terminated from employment with all participating employers for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021. The department may adopt rules to implement this paragraph. Benefits funded by employer and required employee contributions are payable in accordance with the following terms and conditions:

1. Benefits shall be paid only to a participating member, to his or her beneficiaries, or to his or her estate, as designated by the member.

2. Benefits shall be paid by the provider company or companies in accordance with the law, the provisions of the contract, and any applicable department rule or policy.

3. In the event of a member's death, moneys accumulated by, or on behalf of, the member, less withholding taxes remitted to the Internal Revenue Service, if any, shall be distributed to the member's designated beneficiary or beneficiaries, or to the member's estate, as if the member retired on the date of death, as provided in paragraph (d). No other death benefits are available to survivors of members under the optional retirement program except for such benefits, or coverage for such benefits, as are separately afforded by the employer, at the employer's discretion.

(b) Benefits, including employee contributions, are not payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments

necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code.

(c) Upon receipt by the provider company of a properly executed application for distribution of benefits, the total accumulated benefit is payable to the participating member as:

1. A lump-sum distribution to the member;
2. A lump-sum direct rollover distribution whereby all accrued benefits, plus interest and investment earnings, are paid from the member's account directly to an eligible retirement plan, as defined in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the member;
3. Periodic distributions;
4. A partial lump-sum payment whereby a portion of the accrued benefit is paid to the member and the remaining amount is transferred to an eligible retirement plan, as defined in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the member; or
5. Such other distribution options as are provided in the member's optional retirement program contract.

(d) Survivor benefits are payable as:

1. A lump-sum distribution payable to the beneficiaries or to the deceased member's estate;
2. An eligible rollover distribution on behalf of the surviving spouse of a deceased member, whereby all accrued benefits, plus interest and investment earnings, are paid from the deceased member's account directly to an eligible retirement plan, as described in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the surviving spouse;
3. Such other distribution options as are provided in the member's optional retirement program contract; or
4. A partial lump-sum payment whereby a portion of the accrued benefit is paid to the deceased member's surviving spouse or other designated beneficiaries, less withholding taxes remitted to the Internal Revenue Service, if any, and the remaining amount is transferred directly to an eligible retirement plan, as described in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the surviving spouse. The proportions must be specified by the member or the surviving beneficiary.

This paragraph does not abrogate other applicable provisions of state or federal law providing payment of death benefits.

(e) The benefits payable to any person under the optional retirement program, and any contribution accumulated under such program, are not subject to assignment, execution, or attachment or to any legal process.

(f) A participating member who chooses to receive his or her benefits must be terminated for 3 calendar months to be eligible to receive benefits funded by employer and employee contributions. The member must notify the provider company of the date he or she wishes benefits funded by required employer and employee contributions to begin and must be terminated as defined in s. 121.021 after the initial benefit

payment or distribution is received. Benefits may be deferred until the member chooses to make such application.

(g) Benefits funded by the participating member's voluntary personal contributions may be paid out after termination from employment with all participating employers for 3 calendar months and in any form within the limits provided in the contract between the member and the provider company. The member shall notify the provider company regarding the date and provisions under which he or she wants to receive the employee-funded portion of the plan.

(h) For purposes of this section, "retiree" means a former participating member of the optional retirement program who has terminated employment and has taken a distribution as provided in this subsection, except for a mandatory distribution of a de minimis account authorized by the department.

#### (6) ADMINISTRATION OF PROGRAM.—

(a) The optional retirement program authorized by this section shall be administered by the department. The department shall adopt rules establishing the responsibilities of the institutions in the State University System in administering the optional retirement program. The Board of Regents shall, no more than 90 days after July 1, 1983, submit to the department its recommendations for the contracts to be offered by the companies chosen by the department. Effective July 1, 2001, the State Board of Education shall submit to the department its recommendations for the contracts to be offered by the companies chosen by the department. Effective July 1, 2007, the Board of Governors of the State University System shall submit recommendations on contracts within 90 days after request by the department. The recommendations of the board shall include the following:

1. The nature and extent of the rights and benefits in relation to the required contributions; and
2. The suitability of the rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of eligible employees.

(b) After receiving and considering the recommendations of the Board of Governors of the State University System, the department shall designate no more than six companies from which contracts may be purchased under the program and shall approve the form and content of the optional retirement program contracts. Any domestic company that has been designated as of July 1, 2005, shall be included in the six companies until expiration of its existing contract with the department. The domestic company may assign its contract with the department to an affiliated qualified company that is wholly owned by the domestic company's parent company and has assumed 100 percent of the responsibility for the contracts purchased from the domestic company.

(c) Effective July 1, 1997, the State Board of Administration shall review and make recommendations to the department on the acceptability of all investment products proposed by provider companies of the optional retirement program before they are offered through annuity contracts to the participants and may

advise the department of any changes necessary to ensure that the optional retirement program offers an acceptable mix of investment products. The department shall make the final determination as to whether an investment product will be approved for the program.

(d) The provisions of each contract applicable to a participant in the optional retirement program shall be contained in a written program description which shall include a report of pertinent financial and actuarial information on the solvency and actuarial soundness of the program and the benefits applicable to the participant. Such description shall be furnished by the companies to each participant in the program and to the department upon commencement of participation in the program and annually thereafter.

(e) The department shall ensure that each participant in the optional retirement program is provided an accounting of the total contribution and the annual contribution made by and on behalf of such participant.

(7) **PROCUREMENT OF ADDITIONAL PROVIDERS.**—If the department chooses to designate an additional provider company from which contracts may be purchased under the program as provided in paragraph (6)(b), the department shall conduct a competitive procurement and the designation of the additional provider is effective until December 31, 2014. All companies seeking a designation that is effective on or after January 1, 2015, shall participate together in a separate competitive procurement conducted by the department for the purpose of selecting the total number of provider companies authorized in paragraph (6)(b) and deemed reasonable and prudent by the department.

**History.**—s. 1, ch. 83-197; s. 1, ch. 86-255; s. 9, ch. 87-373; s. 15, ch. 88-382; s. 4, ch. 89-126; s. 34, ch. 89-526; s. 18, ch. 90-274; s. 10, ch. 92-122; s. 60, ch. 92-279; s. 55, ch. 92-326; s. 5, ch. 93-285; s. 34, ch. 94-249; s. 1431, ch. 95-147; s. 17, ch. 97-180; s. 14, ch. 98-138; s. 6, ch. 99-7; s. 1, ch. 99-252; s. 51, ch. 99-255; s. 14, ch. 99-392; s. 5, ch. 2001-262; s. 7, ch. 2002-273; s. 4, ch. 2005-134; s. 3, ch. 2005-253; s. 3, ch. 2007-92; s. 16, ch. 2007-217; s. 5, ch. 2008-139; s. 17, ch. 2009-209; s. 24, ch. 2011-68; s. 1, ch. 2012-10; s. 3, ch. 2012-146; s. 8, ch. 2012-222.

**Note.**—Abolished by s. 3, ch. 2001-170.

**121.355 Community College Optional Retirement Program and State University System Optional Retirement Program member transfer.**—Effective January 1, 2009, through December 31, 2009, an employee who is a former member of the Community College Optional Retirement Program or the State University System Optional Retirement Program and present mandatory member of the Florida Retirement System Pension Plan may receive service credit equal to his or her years of service under the Community College Optional Retirement Program or the State University System Optional Retirement Program under the following conditions:

(1) The cost for such credit must represent the actuarial accrued liability for the affected period of service. The cost shall be calculated using the discount rate and other relevant actuarial assumptions that were used to value the Florida Retirement System Pension Plan liabilities in the most recent actuarial valuation. The calculation must include any service already maintained under the pension plan in addition to the years under the Community College Optional Retirement Program or the State University System Optional Retirement

Program. The actuarial accrued liability of any service already maintained under the pension plan shall be applied as a credit to total cost resulting from the calculation. The division shall ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary.

(2) The employee must transfer from his or her Community College Optional Retirement Program account or State University System Optional Retirement Program account, subject to the terms of the applicable optional retirement program contract, and from other employee moneys as necessary, a sum representing the actuarial accrued liability immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and service in the Community College Optional Retirement Program or State University System Optional Retirement Program.

(3) The employee may not receive service credit for a period of mandatory participation in the State University Optional Retirement Program or for a period for which a distribution was received from the Community College Optional Retirement Program or State University System Optional Retirement Program.

**History.**—s. 6, ch. 2008-139; s. 25, ch. 2011-68.

#### **121.40 Cooperative extension personnel at the Institute of Food and Agricultural Sciences; supplemental retirement benefits.**—

(1) **SHORT TITLE.**—This section shall be known and may be cited as the “Institute of Food and Agricultural Sciences Supplemental Retirement Act.”

(2) **PURPOSE.**—The purpose of this act is to provide a supplement to the monthly retirement benefits being paid under the federal Civil Service Retirement System to, or with respect to, certain retired employees of the Institute of Food and Agricultural Sciences at the University of Florida, whose positions were ineligible for coverage under a state-supported retirement system.

(3) **DEFINITIONS.**—The definitions provided in s. 121.021 shall not apply to this program except when specifically cited. For the purposes of this section, the following words or phrases have the respective meanings set forth:

(a) “Institute” means the Institute of Food and Agricultural Sciences of the University of Florida.

(b) “Department” means the Department of Management Services.

(c) “Participant” means any employee of the institute who is eligible to receive a supplemental benefit under this program as provided in subsection (4).

(d) “Trust fund” means the Florida Retirement System Trust Fund.

(e) “Creditable service” means any service subsequent to December 1, 1970, with the institute as a cooperative extension employee holding both state and federal appointments, that is credited for retirement purposes by the institute toward a federal Civil Service Retirement System annuity.

(4) **ELIGIBILITY FOR SUPPLEMENT.**—To be eligible for a benefit under this program pursuant to the provisions of this section, a person must meet all of the following eligibility criteria:



(a) The person must have held both state and federal appointments while employed at the institute, and have completed 10 years of creditable service with the institute, subsequent to December 1, 1970.

(b) The person must be participating in the federal Civil Service Retirement System based on service at the institute.

(c) The person must have retired from the institute on or after January 1, 1985, and must have been eligible for benefits under the federal Civil Service Retirement System commencing immediately upon the termination of service with the institute.

(d) The person must have attained the age of 62.

(e) The person must not be entitled to any benefit from a state-supported retirement system or from social security based upon service as a cooperative extension employee of the institute. Participation in the Institute of Food and Agricultural Sciences Supplemental Retirement Program shall not constitute membership in the Florida Retirement System.

(f) The person must have been employed with the institute prior to, and on, July 1, 1983.

(5) **SUPPLEMENTAL AMOUNT.**—The supplemental payment shall provide a benefit to the retiree equal to the amount by which the retirement annuity, without a survivor benefit, earned by the employee under the federal Civil Service Retirement System with respect to service as a cooperative extension employee of the institute after December 1, 1970, is inferior to:

(a) An amount equal to the option one retirement benefit that the employee would have been entitled to receive at his or her normal retirement age under the Florida Retirement System, attributable only to creditable service after December 1, 1970, as a cooperative extension employee of the institute, excluding any past or prior service credit, had such employee been a member of the Florida Retirement System; plus

(b) An amount equal to the primary insurance amount that the individual employee would have been entitled to receive under social security at age 62 had he or she been covered for such employment, such amount to be computed in accordance with the Social Security Act only with respect to employment as a cooperative extension employee of the institute after December 1, 1970.

(6) **PAYMENT OF SUPPLEMENT.**—Any participant who retires on or after January 1, 1985, from the federal Civil Service Retirement System as a cooperative extension employee of the institute at the University of Florida and who satisfies all of the eligibility criteria specified in subsection (4) shall be entitled to receive a supplemental benefit under this program computed in accordance with subsection (5), to begin July 1, 1985, or the month of retirement, or the month in which the participant becomes age 62, whichever is later. Upon application to the administrator, the participant shall receive a monthly supplemental benefit which shall commence on the last day of the month of retirement and shall be payable on the last day of the month thereafter during his or her lifetime. A participant may have federal income tax and health insurance premiums deducted from his or her monthly supplemental benefit in the same manner as provided in s. 121.091(14)(a)

and (b) for monthly retirement benefits under the Florida Retirement System.

(7) **OPTIONAL FORMS OF SUPPLEMENTAL RETIREMENT BENEFITS.**—Prior to the receipt of the first monthly supplemental retirement payment under this program, a participant shall elect to receive the supplemental retirement benefits to which he or she is entitled under subsection (6) in accordance with s. 121.091(6).

(8) **DEATH BENEFITS.**—

(a) If the employment of a participant of this program is terminated by reason of his or her death subsequent to the completion of 10 years of creditable service with the institute but prior to his or her actual retirement, such 10-year period having commenced on or after December 1, 1970, it shall be assumed that the participant had met all of the eligibility requirements under this section and had retired from the federal Civil Service Retirement System and under this section as of the date of death, having elected, in accordance with subsection (7), the optional form of supplemental payment most favorable to his or her beneficiary, as determined by the administrator. The monthly supplemental benefit provided in this paragraph shall be paid to the participant's beneficiary (spouse or other financial dependent) upon such beneficiary's attaining the age of 62 and shall be paid thereafter for the beneficiary's lifetime.

(b) If a participant of this program dies subsequent to his or her actual retirement under the federal Civil Service Retirement System but prior to attaining age 62, and such participant was otherwise eligible for supplemental benefits under this section, it shall be assumed that the participant had met all of the eligibility requirements under this section and had retired as of the date of death, having elected, in accordance with subsection (7), the optional form of supplemental payment most favorable to his or her beneficiary, as determined by the administrator. The monthly supplemental benefit provided in this paragraph shall be paid to the participant's beneficiary (spouse or other financial dependent) upon such beneficiary's attaining the age of 62 and shall be paid thereafter for the beneficiary's lifetime.

(9) **DESIGNATION OF BENEFICIARIES.**—Each participant of this program may designate beneficiaries in accordance with s. 121.091(8).

(10) **COST-OF-LIVING ADJUSTMENT OF SUPPLEMENTAL BENEFITS.**—On each July 1, the supplemental benefit of each retired participant of this program and each annuitant thereof shall be adjusted as provided in s. 121.101.

(11) **EMPLOYMENT AFTER RETIREMENT: LIMITATION.**—Any person who is receiving a supplemental retirement benefit under this program may be reemployed by any private or public employer after retirement and receive supplemental retirement benefits pursuant to this section and compensation from his or her employer, without any limitations. However, if a retired participant who is receiving a supplemental retirement benefit under this section is reemployed at the institute in a position as a cooperative extension employee of the institute, he or she shall forfeit all rights to supplemental retirement benefits in accordance with the eligibility provisions of paragraph (4)(e).

## (12) CONTRIBUTIONS.—

(a) For the purpose of funding the supplemental benefits provided by this section, the institute is authorized and required to pay, commencing July 1, 1985, the necessary monthly contributions from its appropriated budget. These amounts shall be paid into the Florida Retirement System Trust Fund.

(b) The monthly contributions required to be paid pursuant to paragraph (a) on the gross monthly salaries, from all sources with respect to such employment, paid to those employees of the institute who hold both state and federal appointments and who participate in the federal Civil Service Retirement System shall be as follows:

Dates of Contribution Rate Changes	Percentage Due
July 1, 1985, through December 31, 1988	6.68%
January 1, 1989, through December 31, 1993	6.35%
January 1, 1994, through December 31, 1994	6.69%
January 1, 1995, through June 30, 1996	6.82%
July 1, 1996, through June 30, 1998	5.64%
July 1, 1998, through June 30, 2001	7.17%
July 1, 2001, through June 30, 2003	6.96%
July 1, 2003, through June 30, 2005	13.83%
July 1, 2005, through June 30, 2007	20.23%
Effective July 1, 2007	18.75%

## (13) ADMINISTRATION OF PROGRAM.—

(a) The department shall make such rules as are necessary for the effective and efficient administration of this program. The secretary of the department shall be the administrator of the program. The funds to pay the expenses for such administration shall be appropriated from the interest earned on investments made for the Florida Retirement System Trust Fund.

(b) The department may require oaths, by affidavit or otherwise, and acknowledgments from persons in connection with the administration of its duties and responsibilities under this section.

**History.**—s. 1, ch. 84-358; s. 6, ch. 85-246; s. 16, ch. 88-382; s. 19, ch. 90-274; s. 11, ch. 92-122; s. 61, ch. 92-279; s. 55, ch. 92-326; s. 10, ch. 93-193; s. 9, ch. 94-259; s. 1432, ch. 95-147; s. 19, ch. 95-154; s. 8, ch. 96-423; s. 15, ch. 98-138; s. 13, ch. 98-413; s. 56, ch. 99-2; s. 52, ch. 99-255; s. 15, ch. 99-392; s. 4, ch. 2001-262; s. 6, ch. 2003-260; s. 2, ch. 2005-93; s. 3, ch. 2007-100.

**Note.**—Former s. 240.508.

**PART II****FLORIDA RETIREMENT SYSTEM INVESTMENT PLAN**

- 121.4501 Florida Retirement System Investment Plan.
- 121.4502 Florida Retirement System Investment Plan Trust Fund.
- 121.4503 Florida Retirement System Contributions Clearing Trust Fund.
- 121.571 Contributions.
- 121.591 Payment of benefits.
- 121.5911 Disability retirement program; qualified status; rulemaking authority.

- 121.5912 Survivor benefit retirement program; qualified status; rulemaking authority.

**121.4501 Florida Retirement System Investment Plan.—**

(1) The Trustees of the State Board of Administration shall establish a defined contribution program called the “Florida Retirement System Investment Plan” or “investment plan” for members of the Florida Retirement System under which retirement benefits will be provided for eligible employees who elect to participate in the program. The retirement benefits shall be provided through member-directed investments, in accordance with s. 401(a) of the Internal Revenue Code and related regulations. The employer and employee shall make contributions, as provided in this section and ss. 121.571 and 121.71, to the Florida Retirement System Investment Plan Trust Fund toward the funding of benefits.

(2) **DEFINITIONS.**—As used in this part, the term:

(a) “Approved provider” or “provider” means a private sector company that is selected and approved by the state board to offer one or more investment products or services to the investment plan. The term includes a bundled provider that offers members a range of individually allocated or unallocated investment products and may offer a range of administrative and customer services, which may include accounting and administration of individual member benefits and contributions; individual member recordkeeping; asset purchase, control, and safekeeping; direct execution of the member’s instructions as to asset and contribution allocation; calculation of daily net asset values; direct access to member account information; periodic reporting to members, at least quarterly, on account balances and transactions; guidance, advice, and allocation services directly relating to the provider’s own investment options or products, but only if the bundled provider complies with the standard of care of s. 404(a)(1)(A-B) of the Employee Retirement Income Security Act of 1974 (ERISA), and if providing such guidance, advice, or allocation services does not constitute a prohibited transaction under s. 4975(c)(1) of the Internal Revenue Code or s. 406 of ERISA, notwithstanding that such prohibited transaction provisions do not apply to the retirement program; a broad array of distribution options; asset allocation; and retirement counseling and education. Private sector companies include investment management companies, insurance companies, depositories, and mutual fund companies.

(b) “Average monthly compensation” means one-twelfth of average final compensation as defined in s. 121.021.

(c) “Covered employment” means employment in a regularly established position as defined in s. 121.021.

(d) “Electronic means” means by telephone, if the required information is received on a recorded line, or through Internet access, if the required information is captured online.

(e) “Eligible employee” means an officer or employee, as defined in s. 121.021, who:

1. Is a member of, or is eligible for membership in, the Florida Retirement System, including any renewed member of the Florida Retirement System initially enrolled before July 1, 2010;

2. Participates in, or is eligible to participate in, the Senior Management Service Optional Annuity Program as established under s. 121.055(6), the State Community College System Optional Retirement Program as established under s. 121.051(2)(c), or the State University System Optional Retirement Program established under s. 121.35; or

3. Is a retired member of the investment plan, the State University System Optional Retirement Program, the Senior Management Service Optional Annuity Program, or the State Community College System Optional Retirement Program who is reemployed in a regularly established position on or after July 1, 2017, and enrolled as a renewed member as provided in s. 121.122.

The term does not include any member participating in the Deferred Retirement Option Program established under s. 121.091(13), a retiree of the pension plan who is reemployed in a regularly established position on or after July 1, 2010, a retiree of a state-administered retirement system initially reemployed in a regularly established position on or after July 1, 2010, through June 30, 2017, or a mandatory participant of the State University System Optional Retirement Program established under s. 121.35.

(f) "Employer" means an employer, as defined in s. 121.021, of an eligible employee.

(g) "Florida Retirement System Investment Plan" or "investment plan" means the defined contribution program established under this part.

(h) "Florida Retirement System Pension Plan" or "pension plan" means the defined benefit program of the Florida Retirement System administered under part I of this chapter.

(i) "Member" or "employee" means an eligible employee who enrolls in, or who defaults into, the investment plan as provided in subsection (4), a terminated Deferred Retirement Option Program member as described in subsection (21), or a beneficiary or alternate payee of a member or employee.

(j) "Member contributions" or "employee contributions" means the sum of all amounts deducted from the salary of a member by his or her employer in accordance with s. 121.71(3) and credited to his or her individual account in the investment plan, plus any earnings on such amounts and any contributions specified in paragraph (5)(e).

(k) "Retiree" means a former member of the investment plan who has terminated employment and taken a distribution of vested employee or employer contributions as provided in s. 121.591, except for a mandatory distribution of a de minimis account authorized by the state board or a minimum required distribution provided by s. 401(a)(9) of the Internal Revenue Code.

(l) "Vested" or "vesting" means the guarantee that a member is eligible to receive a retirement benefit upon completion of the required years of service under the investment plan.

### (3) RETIREMENT SERVICE CREDIT; TRANSFER OF BENEFITS.—

(a) An eligible employee who is employed in a regularly established position by a state employer on June 1, 2002; by a district school board employer on September 1, 2002; or by a local employer on December 1, 2002, and who is a member of the pension plan at the time of his or her election to participate in the investment plan shall retain all retirement service credit earned under the pension plan as credited under the system and is entitled to a deferred benefit upon termination. However, election to enroll in the investment plan terminates the active membership of the employee in the pension plan, and the service of a member in the investment plan is not creditable under the pension plan for purposes of benefit accrual but is creditable for purposes of vesting.

(b) Notwithstanding paragraph (a), an eligible employee who elects to participate in, or who defaults into, the investment plan and establishes one or more individual member accounts may elect to transfer to the investment plan a sum representing the present value of the employee's accumulated benefit obligation under the pension plan, except as provided in paragraph (4)(b). Upon transfer, all service credit earned under the pension plan is nullified for purposes of entitlement to a future benefit under the pension plan. A member may not transfer the accumulated benefit obligation balance from the pension plan after the time period for enrolling in the investment plan has expired.

1. For purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated creditable service and estimated average final compensation under the pension plan, subject to recomputation under subparagraph 2. For state employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on June 30, 2002; for district school board employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on September 30, 2002; and for local government employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on December 31, 2002. The dates specified are the "estimate date" for these employees. The actuarial present value of the employee's accumulated benefit obligation shall be based on the following:

a. The discount rate and other relevant actuarial assumptions used to value the Florida Retirement System Trust Fund at the time the amount to be transferred is determined, consistent with the factors provided in sub-subparagraphs b. and c.

b. A benefit commencement age, based on the member's estimated creditable service as of the estimate date.

c. Except as provided under sub-subparagraph d., for a member initially enrolled:

(l) Before July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 62; or

(B) The age the member would attain if the member completed 30 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

(II) On or after July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 65; or

(B) The age the member would attain if the member completed 33 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

d. For members of the Special Risk Class and for members of the Special Risk Administrative Support Class entitled to retain the special risk normal retirement date:

(I) Initially enrolled before July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 55; or

(B) The age the member would attain if the member completed 25 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

(II) Initially enrolled on or after July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 60; or

(B) The age the member would attain if the member completed 30 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

e. The calculation must disregard vesting requirements and early retirement reduction factors that would otherwise apply under the pension plan.

2. For each member who elects to transfer moneys from the pension plan to his or her account in the investment plan, the division shall recompute the amount transferred under subparagraph 1. within 60 days after the actual transfer of funds based upon the member's actual creditable service and actual final average compensation as of the initial date of participation in the investment plan. If the recomputed amount differs from the amount transferred by \$10 or more, the division shall:

a. Transfer, or cause to be transferred, from the Florida Retirement System Trust Fund to the member's account the excess, if any, of the recomputed amount over the previously transferred amount together with interest from the initial date of transfer to the date of transfer under this subparagraph, based upon the effective annual interest equal to the assumed return on the actuarial investment which was used in the most

recent actuarial valuation of the system, compounded annually.

b. Transfer, or cause to be transferred, from the member's account to the Florida Retirement System Trust Fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest from the initial date of transfer to the date of transfer under this subparagraph, based upon 6 percent effective annual interest, compounded annually, pro rata based on the member's allocation plan.

3. If contribution adjustments are made as a result of employer errors or corrections, including plan corrections, following recomputation of the amount transferred under subparagraph 1., the member is entitled to the additional contributions or is responsible for returning any excess contributions resulting from the correction. However, a return of such erroneous excess pretax contribution by the plan must be made within the period allowed by the Internal Revenue Service. The present value of the member's accumulated benefit obligation may not be recalculated.

4. As directed by the member, the state board shall transfer or cause to be transferred the appropriate amounts to the designated accounts within 30 days after the effective date of the member's participation in the investment plan unless the major financial markets for securities available for a transfer are seriously disrupted by an unforeseen event that causes the suspension of trading on a national securities exchange in the country where the securities were issued. In that event, the 30-day period may be extended by a resolution of the state board. Transfers are not commissionable or subject to other fees and may be in the form of securities or cash, as determined by the state board. Such securities are valued as of the date of receipt in the member's account.

5. If the state board or the division receives notification from the United States Internal Revenue Service that this paragraph or any portion of this paragraph will cause the retirement system, or a portion thereof, to be disqualified for tax purposes under the Internal Revenue Code, the portion that will cause the disqualification does not apply. Upon such notice, the state board and the division shall notify the presiding officers of the Legislature.

#### (4) PARTICIPATION; ENROLLMENT.—

(a)1. Effective June 1, 2002, through February 28, 2003, a 90-day election period was provided to each eligible employee participating in the Florida Retirement System, preceded by a 90-day education period, permitting each eligible employee to elect membership in the investment plan. An employee who failed to elect the investment plan during the election period remained in the pension plan. An eligible employee who was employed in a regularly established position during the election period was granted the option to make one subsequent election, as provided in paragraph (f). With respect to an eligible employee who did not participate in the initial election period or who is initially employed in a regularly established position after the close of the initial election period but before January 1, 2018, such employee shall, by default, be enrolled in the pension

plan at the commencement of employment and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the investment plan. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable, except as provided in paragraph (f).

a. If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The retirement contributions paid through the month of the employee plan change shall be transferred to the investment program, and, effective the first day of the next month, the employer and employee must pay the applicable contributions based on the employee membership class in the program.

b. An employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.

2. With respect to employees who become eligible to participate in the investment plan pursuant to s. 121.051(2)(c)3. or s. 121.35(3)(i), the employee may elect to participate in the investment plan in lieu of retaining his or her membership in the State Community College System Optional Retirement Program or the State University System Optional Retirement Program. The election must be made in writing or by electronic means and must be filed with the third-party administrator. This election is irrevocable, except as provided in paragraph (f). Upon making such election, the employee shall be enrolled as a member in the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's participation in the State Community College System Optional Retirement Program or the State University System Optional Retirement Program terminates. The employee's enrollment in the investment plan is effective on the first day of the month for which a full month's employer and employee contribution is made to the investment plan.

(b)1. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position commencing on or after January 1, 2018, or who did not complete an election window before January 1, 2018, any such employee shall be enrolled in the pension plan at the commencement of employment and may, by the last business day of the eighth month following the employee's month of hire, elect to participate in the pension plan or the investment plan. Eligible employees may make a plan election only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay.

2. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the pension plan or investment plan is irrevocable, except as provided in paragraph (f).

3.a. Except as provided in subparagraph 4., if the employee fails to make an election to either the pension plan or the investment plan during the 8-month period following the month of hire, the employee is deemed to have elected the investment plan and shall default into the investment plan retroactively to the employee's date of employment. The employee's option to participate in the pension plan is forfeited, except as provided in paragraph (f).

b. The amount of the employee and employer contributions paid through the date of default to the investment plan shall be transferred to the investment plan and shall be placed in a default fund as designated by the State Board of Administration. The employee may move the contributions once an account is activated in the investment plan.

4. If the employee is employed in a position included in the Special Risk Class and fails to make an election to either the pension plan or the investment plan during the 8-month period following the month of hire, the employee is deemed to have elected the pension plan and shall default into the pension plan retroactively to the employee's date of employment. The employee's option to participate in the investment plan is forfeited, except as provided in paragraph (f).

5. Effective the first day of the month after an eligible employee makes a plan election of the pension plan or investment plan, or the first day of the month after default, the employee and employer shall pay the applicable contributions based on the employee membership class in the program.

(c) Contributions available for self-direction by a member who has not selected one or more specific investment products shall be allocated as prescribed by the state board. The third-party administrator shall notify the member at least quarterly that the member should take an affirmative action to make an asset allocation among the investment products.

(d) On or after July 1, 2011, a member of the pension plan who obtains a refund of employee contributions retains his or her prior plan choice upon return to employment in a regularly established position with a participating employer.

(e)1. A member of the investment plan who takes a distribution of any contributions from his or her investment plan account is considered a retiree. A retiree who is initially reemployed in a regularly established position on or after July 1, 2010, through June 30, 2017, is not eligible for renewed membership, except as provided in s. 121.122.

2. A retiree who is reemployed on or after July 1, 2017, shall be enrolled as a renewed member as provided in s. 121.122.

(f) After the period during which an eligible employee had the choice to elect the pension plan or the investment plan, or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan. Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s.

121.021(17)(b), excluding leaves of absence without pay. Effective July 1, 2005, such elections are effective on the first day of the month following the receipt of the election by the third-party administrator and are not subject to the requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except when the election is received by the third-party administrator. This paragraph is contingent upon approval by the Internal Revenue Service.

1. If the employee chooses to move to the investment plan, the provisions of subsection (3) govern the transfer.

2. If the employee chooses to move to the pension plan, the employee must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the present value of that employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and service in the investment plan. Benefit commencement occurs on the first date the employee is eligible for unreduced benefits, using the discount rate and other relevant actuarial assumptions that were used to value the pension plan liabilities in the most recent actuarial valuation. For any employee who, at the time of the second election, already maintains an accrued benefit amount in the pension plan, the then-present value of the accrued benefit is deemed part of the required transfer amount. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. A refund of any employee contributions or additional member payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

3. Notwithstanding subparagraph 2., an employee who chooses to move to the pension plan and who became eligible to participate in the investment plan by reason of employment in a regularly established position with a state employer after June 1, 2002; a district school board employer after September 1, 2002; or a local employer after December 1, 2002, must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the employee's actuarial accrued liability. A refund of any employee contributions or additional member payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

4. An employee's ability to transfer from the pension plan to the investment plan pursuant to paragraphs (a) and (b), and the ability of a current employee to have an option to later transfer back into the pension plan under subparagraph 2., shall be deemed a significant system amendment. Pursuant to s. 121.031(4), any resulting unfunded liability arising from actual original transfers from the pension plan to the investment plan must be amortized within 30 plan years as a separate unfunded actuarial base independent of the reserve

stabilization mechanism defined in s. 121.031(3)(f). For the first 25 years, a direct amortization payment may not be calculated for this base. During this 25-year period, the separate base shall be used to offset the impact of employees exercising their second program election under this paragraph. The actuarial funded status of the pension plan will not be affected by such second program elections in any significant manner, after due recognition of the separate unfunded actuarial base. Following the initial 25-year period, any remaining balance of the original separate base shall be amortized over the remaining 5 years of the required 30-year amortization period.

5. If the employee chooses to transfer from the investment plan to the pension plan and retains an excess account balance in the investment plan after satisfying the buy-in requirements under this paragraph, the excess may not be distributed until the member retires from the pension plan. The excess account balance may be rolled over to the pension plan and used to purchase service credit or upgrade creditable service in the pension plan.

(5) CONTRIBUTIONS.—

(a) The employee and employer shall make the required contributions to the investment plan based on a percentage of the employee's gross monthly compensation, as provided in part III of this chapter.

(b) Employee contributions shall be paid as provided in s. 121.71.

(c) The state board, acting as plan fiduciary, must ensure that all plan assets are held in a trust, pursuant to s. 401 of the Internal Revenue Code. The fiduciary must ensure that such contributions are allocated as follows:

1. The employer and employee contribution portion earmarked for member accounts shall be used to purchase interests in the appropriate investment vehicles as specified by the member, or in accordance with paragraph (4)(c).

2. The employer contribution portion earmarked for administrative and educational expenses shall be transferred to the state board's Administrative Trust Fund.

3. The employer contribution portion earmarked for disability benefits and line-of-duty death benefits shall be transferred to the Florida Retirement System Trust Fund.

(d) The third-party administrator is responsible for monitoring and notifying employers of the maximum contribution levels allowed for members under the Internal Revenue Code. If a member contributes to any other tax-deferred plan, the member is responsible for ensuring that total contributions made to the investment plan and to any other such plan do not exceed federally permitted maximums.

(e) The investment plan may accept for deposit into member accounts contributions in the form of rollovers or direct trustee-to-trustee transfers by or on behalf of members, reasonably determined by the state board to be eligible for rollover or transfer to the investment plan pursuant to the Internal Revenue Code, if such contributions are made in accordance with rules adopted by the board. Such contributions must be accounted for in

accordance with applicable Internal Revenue Code requirements and rules of the state board.

(6) VESTING REQUIREMENTS.—

(a) A member is fully and immediately vested in all employee contributions paid to the investment plan as provided in s. 121.71, plus interest and earnings thereon and less investment fees and administrative charges.

(b)1. With respect to employer contributions paid on behalf of the member to the investment plan, plus interest and earnings thereon and less investment fees and administrative charges, a member is vested after completing 1 work year with an employer, including any service while the member was a member of the pension plan or an optional retirement program authorized under s. 121.051(2)(c) or s. 121.055(6).

2. If the member terminates employment before satisfying the vesting requirements, the nonvested accumulation must be transferred from the member's accounts to the state board for deposit and investment by the state board in its suspense account created within the Florida Retirement System Investment Plan Trust Fund. If the terminated member is reemployed as an eligible employee within 5 years, the state board shall transfer to the member's account any amount previously transferred from the member's accounts to the suspense account, plus actual earnings on such amount while in the suspense account.

(c)1. With respect to amounts contributed by an employer and transferred from the pension plan to the investment plan, plus interest and earnings, and less investment fees and administrative charges, a member shall be vested in the amount transferred upon meeting the vesting requirements for the member's membership class as set forth in s. 121.021(45). The third-party administrator shall account for such amounts for each member. The division shall notify the member and the third-party administrator when the member has satisfied the vesting period for Florida Retirement System purposes.

2. If the member terminates employment before satisfying the vesting requirements, the nonvested accumulation must be transferred from the member's accounts to the state board for deposit and investment by the state board in the suspense account created within the Florida Retirement System Investment Plan Trust Fund. If the terminated member is reemployed as an eligible employee within 5 years, the state board shall transfer to the member's accounts any amount previously transferred from the member's accounts to the suspense account, plus the actual earnings on such amount while in the suspense account.

(d) Any nonvested accumulations transferred from a member's account to the state board's suspense account shall be forfeited, including accompanying service credit, by the member if the member is not reemployed as an eligible employee within 5 years after termination.

(e) If the member elects to receive any of his or her vested employee or employer contributions upon termination of employment as provided in s. 121.021(39)(a), except for a mandatory distribution of a de minimis account authorized by the state board or a minimum required distribution provided by s. 401(a)(9) of the

Internal Revenue Code, the member shall forfeit all nonvested employer contributions, and accompanying service credit, paid on behalf of the member to the investment plan.

(7) BENEFITS.—Under the investment plan, benefits must:

(a) Be provided in accordance with s. 401(a) of the Internal Revenue Code.

(b) Accrue in individual accounts that are member-directed, portable, and funded by employer and employee contributions and earnings thereon.

(c) Be payable in accordance with s. 121.591.

(8) INVESTMENT PLAN ADMINISTRATION.—The investment plan shall be administered by the state board and affected employers. The state board may require oaths, by affidavit or otherwise, and acknowledgments from persons in connection with the administration of its statutory duties and responsibilities for the investment plan. An oath, by affidavit or otherwise, may not be required of a member at the time of enrollment. Acknowledgment of an employee's election to participate in the program shall be no greater than necessary to confirm the employee's election. The state board shall adopt rules to carry out its statutory duties with respect to administering the investment plan, including establishing the roles and responsibilities of affected state, local government, and education-related employers, the state board, the department, and third-party contractors. The department shall adopt rules necessary to administer the investment plan in coordination with the pension plan and the disability benefits available under the investment plan.

(a)1. The state board shall select and contract with a third-party administrator to provide administrative services if those services cannot be competitively and contractually provided by the division. With the approval of the state board, the third-party administrator may subcontract to provide components of the administrative services. As a cost of administration, the state board may compensate any such contractor for its services, in accordance with the terms of the contract, as is deemed necessary or proper by the board. The third-party administrator may not be an approved provider or be affiliated with an approved provider.

2. These administrative services may include, but are not limited to, enrollment of eligible employees, collection of employer and employee contributions, disbursement of contributions to approved providers in accordance with the allocation directions of members; services relating to consolidated billing; individual and collective recordkeeping and accounting; asset purchase, control, and safekeeping; and direct disbursement of funds to and from the third-party administrator, the division, the state board, employers, members, approved providers, and beneficiaries. This section does not prevent or prohibit a bundled provider from providing any administrative or customer service, including accounting and administration of individual member benefits and contributions; individual member recordkeeping; asset purchase, control, and safekeeping; direct execution of the member's instructions as to asset and contribution allocation; calculation of daily net asset values; direct access to member account

information; or periodic reporting to members, at least quarterly, on account balances and transactions, if these services are authorized by the state board as part of the contract.

(b)1. The state board shall select and contract with one or more organizations to provide educational services. With approval of the state board, the organizations may subcontract to provide components of the educational services. As a cost of administration, the state board may compensate any such contractor for its services in accordance with the terms of the contract, as is deemed necessary or proper by the board. The education organization may not be an approved provider or be affiliated with an approved provider.

2. Educational services shall be designed by the state board and department to assist employers, eligible employees, members, and beneficiaries in order to maintain compliance with United States Department of Labor regulations under s. 404(c) of the Employee Retirement Income Security Act of 1974 and to assist employees in their choice of pension plan or investment plan retirement alternatives. Educational services include, but are not limited to, disseminating educational materials; providing retirement planning education; explaining the pension plan and the investment plan; and offering financial planning guidance on matters such as investment diversification, investment risks, investment costs, and asset allocation. An approved provider may also provide educational information, including retirement planning and investment allocation information concerning its products and services.

(c)1. In evaluating and selecting a third-party administrator, the state board shall establish criteria for evaluating the relative capabilities and qualifications of each proposed administrator. In developing such criteria, the state board shall consider:

a. The administrator's demonstrated experience in providing administrative services to public or private sector retirement systems.

b. The administrator's demonstrated experience in providing daily valued recordkeeping to defined contribution programs.

c. The administrator's ability and willingness to coordinate its activities with employers, the state board, and the division, and to supply to such employers, the board, and the division the information and data they require, including, but not limited to, monthly management reports, quarterly member reports, and ad hoc reports requested by the department or state board.

d. The cost-effectiveness and levels of the administrative services provided.

e. The administrator's ability to interact with the members, the employers, the state board, the division, and the providers; the means by which members may access account information, direct investment of contributions, make changes to their accounts, transfer moneys between available investment vehicles, and transfer moneys between investment products; and any fees that apply to such activities.

f. Any other factor deemed necessary by the state board.

2. In evaluating and selecting an educational provider, the state board shall establish criteria under

which it shall consider the relative capabilities and qualifications of each proposed educational provider. In developing such criteria, the state board shall consider:

a. Demonstrated experience in providing educational services to public or private sector retirement systems.

b. Ability and willingness to coordinate its activities with the employers, the state board, and the division, and to supply to such employers, the board, and the division the information and data they require, including, but not limited to, reports on educational contacts.

c. The cost-effectiveness and levels of the educational services provided.

d. Ability to provide educational services via different media, including, but not limited to, the Internet, personal contact, seminars, brochures, and newsletters.

e. Any other factor deemed necessary by the state board.

3. The establishment of the criteria shall be solely within the discretion of the state board.

(d) The state board shall develop the form and content of any contracts to be offered under the investment plan. In developing the contracts, the board shall consider:

1. The nature and extent of the rights and benefits to be afforded in relation to the contributions required under the plan.

2. The suitability of the rights and benefits provided and the interests of employers in the recruitment and retention of eligible employees.

(e)1. The state board may contract for professional services, including legal, consulting, accounting, and actuarial services, deemed necessary to implement and administer the investment plan. The state board may enter into a contract with one or more vendors to provide low-cost investment advice to members, supplemental to education provided by the third-party administrator. All fees under any such contract shall be paid by those members who choose to use the services of the vendor.

2. The department may contract for professional services, including legal, consulting, accounting, and actuarial services, deemed necessary to implement and administer the investment plan in coordination with the pension plan. The department, in coordination with the state board, may enter into a contract with the third-party administrator in order to coordinate services common to the various programs within the Florida Retirement System.

(f) The third-party administrator may not receive direct or indirect compensation from an approved provider, except as specifically provided for in the contract with the state board.

(g) The state board shall receive and resolve member complaints against the program, the third-party administrator, or any program vendor or provider; shall resolve any conflict between the third-party administrator and an approved provider if such conflict threatens the implementation or administration of the program or the quality of services to employees; and may resolve any other conflicts. The third-party administrator shall retain all member records for at least 5



years for use in resolving any member conflicts. The state board, the third-party administrator, or a provider is not required to produce documentation or an audio recording to justify action taken with regard to a member if the action occurred 5 or more years before the complaint is submitted to the state board. It is presumed that all action taken 5 or more years before the complaint is submitted was taken at the request of the member and with the member's full knowledge and consent. To overcome this presumption, the member must present documentary evidence or an audio recording demonstrating otherwise.

**(9) INVESTMENT OPTIONS OR PRODUCTS; PERFORMANCE REVIEW.—**

(a) The state board shall develop policy and procedures for selecting, evaluating, and monitoring the performance of approved providers and investment products under the investment plan. In accordance with such policy and procedures, the state board shall designate and contract for a number of investment products as determined by the board. The board shall also select one or more bundled providers, each of which may offer multiple investment options and related services, if such approach is determined by the board to provide value to the members otherwise not available through individual investment products. Each approved bundled provider may offer investment options that provide members with the opportunity to invest in each of the following asset classes, to be composed of individual options that represent a single asset class or a combination thereof: money markets, United States fixed income, United States equities, and foreign stock. The state board shall review and manage all educational materials, contract terms, fee schedules, and other aspects of the approved provider relationships to ensure that no provider is unduly favored or penalized by virtue of its status within the investment plan.

(b) The state board shall consider investment options or products it considers appropriate to give members the opportunity to accumulate retirement benefits, subject to the following:

1. The investment plan must offer a diversified mix of low-cost investment products that span the risk-return spectrum and may include a guaranteed account as well as investment products, such as individually allocated guaranteed and variable annuities, which meet the requirements of this subsection and combine the ability to accumulate investment returns with the option of receiving lifetime income consistent with the long-term retirement security of a pension plan and similar to the lifetime-income benefit provided by the Florida Retirement System.

2. Investment options or products offered by approved providers may include mutual funds, group annuity contracts, individual retirement annuities, interests in trusts, collective trusts, separate accounts, and other such financial instruments, and products that give members the option of committing their contributions for an extended time period in an effort to obtain returns higher than those that could be obtained from investment products offering full liquidity.

3. The state board may not contract with a provider that imposes a front-end, back-end, contingent, or

deferred sales charge, or any other fee that limits or restricts the ability of members to select any investment product available in the investment plan. This prohibition does not apply to fees or charges that are imposed on withdrawals from products that give members the option of committing contributions for an extended time period in an effort to obtain returns higher than those that could be obtained from investment products offering full liquidity, if the product, net of all fees and charges, produces material benefits relative to other comparable products in the investment plan offering full liquidity.

4. Fees or charges for insurance features, such as mortality and expense-risk charges, must be reasonable relative to the benefits provided.

- (c) In evaluating and selecting approved providers and products, the state board shall establish criteria for evaluating the relative capabilities and qualifications of each proposed provider company and product. In developing such criteria, the board shall consider the following to the extent such factors may be applied in connection with investment products, services, or providers:

1. Experience in the United States providing retirement products and related financial services under defined contribution retirement programs.

2. Financial strength and stability as evidenced by the highest ratings assigned by nationally recognized rating services when comparing proposed providers that are so rated.

3. Intrastate and interstate portability of the product offered, including early withdrawal options.

4. Compliance with the Internal Revenue Code.

5. The cost-effectiveness of the product provided and the levels of service supporting the product relative to its benefits and its characteristics, including the level of risk borne by the provider.

6. The provider company's ability and willingness to coordinate its activities with Florida Retirement System employers, the department, and the state board, and to supply the employers, the department, and the board with the information and data they require.

7. The methods available to members to interact with the provider company; the means by which members may access account information, direct investment of contributions, make changes to their accounts, transfer moneys between available investment vehicles, and transfer moneys between provider companies; and any fees that apply to such activities.

8. The provider company's policies with respect to the transfer of individual account balances, contributions, and earnings thereon, both internally among investment products offered by the provider company and externally between approved providers, as well as any fees, charges, reductions, or penalties that may be applied.

9. An evaluation of specific investment products, taking into account each product's experience in meeting its investment return objectives net of all related fees, expenses, and charges, including, but not limited to, investment management fees, loads, distribution and

marketing fees, custody fees, recordkeeping fees, education fees, annuity expenses, and consulting fees.

10. Organizational factors, including, but not limited to, financial solvency, organizational depth, and experience in providing institutional and retail investment services.

(d) By March 1, 2010, the state board shall identify and offer at least one terror-free investment product that allocates its funds among securities not subject to divestiture as provided in s. 215.473 if the investment product is deemed by the state board to be consistent with prudent investor standards. A person may not bring a civil, criminal, or administrative action against an approved provider; the state board; or any employee, officer, director, or trustee of such provider based upon the divestiture of any security or the offering of a terror-free investment product as specified in this paragraph.

(e) As a condition of offering an investment option or product in the investment plan, the approved provider must agree to make the investment product or service available under the most beneficial terms offered to any other customer, subject to approval by the state board.

(f) The state board shall regularly review the performance of each approved provider and product and related organizational factors to ensure continued compliance with established selection criteria and with board policy and procedures. Providers and products may be terminated subject to contract provisions. The state board shall adopt procedures to transfer account balances from terminated products or providers to other products or providers in the investment plan.

(g)1. An approved provider shall comply with all applicable federal and state securities and insurance laws and regulations, as well as with the applicable rules and guidelines of the National Association of Securities Dealers which govern the ethical marketing of investment products. In furtherance of this mandate, an approved provider must agree in its contract with the state board to establish and maintain a compliance education and monitoring system to supervise the activities of all personnel who directly communicate with individual members and recommend investment products, which system is consistent with rules of the National Association of Securities Dealers.

2. Approved provider personnel who directly communicate with individual members and who recommend investment products shall make an independent and unbiased determination as to whether an investment product is suitable for a particular member.

3. The state board shall develop procedures to receive and resolve member complaints against a provider or approved provider personnel, and, if appropriate, refer such complaints to the appropriate agency.

4. Approved providers may not sell or in any way distribute any customer list or member identification information generated through their offering of products or services through the investment plan.

#### (10) EDUCATION COMPONENT.—

(a) The state board, in coordination with the department, shall provide for an education component for eligible employees in a manner consistent with this subsection.

(b) The education component must provide system members with impartial and balanced information about plan choices. The education component must involve multimedia formats. Program comparisons must, to the greatest extent possible, be based upon the retirement income that different retirement programs may provide to the member. The state board shall monitor the performance of the contract to ensure that the program is conducted in accordance with the contract, applicable law, and the rules of the state board.

(c) The state board, in coordination with the department, shall provide for an initial and ongoing transfer education component to provide system members with information necessary to make informed plan choice decisions. The transfer education component must include, but is not limited to, information on:

1. The amount of money available to a member to transfer to the defined contribution program.

2. The features of and differences between the pension plan and the defined contribution program, both generally and specifically, as those differences may affect the member.

3. The expected benefit available if the member were to retire under each of the retirement programs, based on appropriate alternative sets of assumptions.

4. The rate of return from investments in the defined contribution program and the period of time over which such rate of return must be achieved to equal or exceed the expected monthly benefit payable to the member under the pension plan.

5. The historical rates of return for the investment alternatives available in the defined contribution programs.

6. The benefits and historical rates of return on investments available in a typical deferred compensation plan or a typical plan under s. 403(b) of the Internal Revenue Code for which the employee may be eligible.

7. The program choices available to employees of the State University System and the comparative benefits of each available program, if applicable.

8. Payout options available in each of the retirement programs.

(d) An ongoing education and communication component must provide eligible employees with information necessary to make informed decisions about choices within their retirement system and in preparation for retirement. The component must include, but is not limited to, information concerning:

1. Rights and conditions of membership.

2. Benefit features within the program, options, and effects of certain decisions.

3. Coordination of contributions and benefits with a deferred compensation plan under s. 457 or a plan under s. 403(b) of the Internal Revenue Code.

4. Significant program changes.

5. Contribution rates and program funding status.

6. Planning for retirement.

(e) Descriptive materials must be prepared under the assumption that the employee is an unsophisticated investor, and all materials used in the education component must be approved by the state board prior to dissemination.

(f) The state board and the department shall also establish a communication component to provide program information to participating employers and the employers' personnel and payroll officers and to explain their respective responsibilities in conjunction with the retirement programs.

(g) Funding for education of new employees may reflect administrative costs to the investment plan and the pension plan.

(11) **MEMBER INFORMATION REQUIREMENTS.** The state board shall ensure that each member is provided a quarterly statement that accounts for the contributions made on behalf of the member; the interest and investment earnings thereon; and any fees, penalties, or other deductions that apply. At a minimum, such statements must:

- (a) Indicate the member's investment options.
- (b) State the market value of the account at the close of the current quarter and previous quarter.
- (c) Show account gains and losses and changes in account accumulation unit values for the quarter.
- (d) Itemize account contributions for the quarter.
- (e) Indicate any account changes due to adjustment of contribution levels, reallocation of contributions, balance transfers, or withdrawals.
- (f) Set forth any fees, charges, penalties, and deductions that apply to the account.
- (g) Indicate the amount of the account in which the member is fully vested and the amount of the account in which the member is not vested.
- (h) Indicate each investment product's performance relative to an appropriate market benchmark.

The third-party administrator shall provide quarterly and annual summary reports to the state board and any other reports requested by the department or the state board. In any solicitation or offer of coverage under the investment plan, a provider company shall be governed by the contract readability provisions of s. 627.4145, notwithstanding s. 627.4145(6)(c). In addition, all descriptive materials must be prepared under the assumption that the member is an unsophisticated investor. Provider companies must maintain an internal system of quality assurance, have proven functional systems that are date-calculation compliant, and be subject to a due-diligence inquiry that proves their capacity and fitness to undertake service responsibilities.

(12) **ADVISORY COUNCIL TO PROVIDE ADVICE AND ASSISTANCE.**—The Investment Advisory Council, created pursuant to s. 215.444, shall assist the state board in implementing and administering the investment plan. The council shall review the state board's initial recommendations regarding the criteria to be used in selecting and evaluating approved providers and investment products. The council may provide comments on the recommendations to the state board within 45 days after receiving the initial recommendations. The state board shall make the final determination as to whether any investment provider or product, any contractor, or any and all contract provisions are approved for the investment plan.

(13) **FEDERAL REQUIREMENTS.**—

(a) This section shall be construed, and the investment plan shall be administered, so as to comply with the Internal Revenue Code, 26 U.S.C., and specifically with plan qualification requirements imposed on governmental plans under s. 401(a) of the Internal Revenue Code. The state board may adopt rules reasonably necessary to establish or maintain the qualified status of the investment plan under the Internal Revenue Code and to implement and administer the investment plan in compliance with the Internal Revenue Code and as designated under this part; provided however, that the board shall not have the authority to adopt any rule which makes a substantive change to the investment plan as designed by this part.

(b) Any section or provision of this chapter which is susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy requirements imposed by s. 401(a) of the Internal Revenue Code.

(c) Contributions payable under this section for any limitation year may not exceed the maximum amount allowable for qualified defined contribution pension plans under applicable provisions of the Internal Revenue Code. If an employee who is enrolled in the investment plan participates in any other plan that is maintained by the participating employer, benefits that accrue under the investment plan shall be considered primary for any aggregate limitation applicable under s. 415 of the Internal Revenue Code.

(14) **INVESTMENT POLICY STATEMENT.**—

(a) Investment products and approved providers selected for the investment plan must conform with the Florida Retirement System Investment Plan Investment Policy Statement, herein referred to as the "statement," as developed and approved by the trustees of the state board. The statement must include, among other items, the investment objectives of the investment plan, manager selection and monitoring guidelines, and performance measurement criteria. As required from time to time, the executive director of the state board may present recommended changes in the statement to the board for approval.

(b) Prior to presenting the statement or any recommended changes to the state board, the executive director of the board shall present such statement or changes to the Investment Advisory Council for review. The council shall present the results of its review to the board prior to the board's final approval of the statement or changes in the statement.

(15) **STATEMENT OF FIDUCIARY STANDARDS AND RESPONSIBILITIES.**—

(a) Investment of defined contribution plan assets shall be made for the sole interest and exclusive purpose of providing benefits to members and beneficiaries and defraying reasonable expenses of administering the plan. The program's assets shall be invested on behalf of the program members with the care, skill, and diligence that a prudent person acting in a like manner would undertake. The performance of the investment duties set forth in this paragraph shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A)-(C). In case of conflict with other

provisions of law authorizing investments, the investment and fiduciary standards set forth in this subsection shall prevail.

(b) If a member or beneficiary of the investment plan exercises control over the assets in his or her account, as determined by reference to regulations of the United States Department of Labor under s. 404(c) of the Employee Retirement Income Security Act of 1974 and all applicable laws governing the operation of the program, a program fiduciary is not liable for any loss to a member's or beneficiary's account which results from the member's or beneficiary's exercise of control.

(c) Subparagraph (8)(b)2. and paragraph (b) incorporate the federal law concept of participant control, established by regulations of the United States Department of Labor under s. 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA). The purpose of this paragraph is to assist employers and the state board in maintaining compliance with s. 404(c), while avoiding unnecessary costs and eroding member benefits under the investment plan. Pursuant to 29 C.F.R. s. 2550.404c-1(b)(2)(i)(B)(1)(viii), the state board or its designated agents shall deliver to members of the investment plan a copy of the prospectus most recently provided to the plan, and, pursuant to 29 C.F.R. s. 2550.404c-1(b)(2)(i)(B)(2)(ii), shall provide such members an opportunity to obtain this information, except that:

1. The requirement to deliver a prospectus shall be satisfied by delivery of a fund profile or summary profile that contains the information that would be included in a summary prospectus as described by Rule 498 under the Securities Act of 1933, 17 C.F.R. s. 230.498. If the transaction fees, expense information or other information provided by a mutual fund in the prospectus does not reflect terms negotiated by the state board or its designated agents, the requirement is satisfied by delivery of a separate document described by Rule 498 substituting accurate information; and

2. Delivery shall be effected if delivery is through electronic means and the following standards are satisfied:

a. Electronically-delivered documents are prepared and provided consistent with style, format, and content requirements applicable to printed documents;

b. Each member is provided timely and adequate notice of the documents that are to be delivered, and their significance, and of the member's right to obtain a paper copy of such documents free of charge;

c. Members have adequate access to the electronic documents, at locations such as their worksites or public facilities, and have the ability to convert the documents to paper free of charge by the state board, and the board or its designated agents take appropriate and reasonable measures to ensure that the system for furnishing electronic documents results in actual receipt. Members have provided consent to receive information in electronic format, which consent may be revoked; and

d. The state board, or its designated agent, actually provides paper copies of the documents free of charge, upon request.

(16) **DISABILITY BENEFITS.**—For any member of the investment plan who becomes totally and permanently disabled, benefits must be paid in accordance with the provisions of s. 121.591.

(17) **SOCIAL SECURITY COVERAGE.**—Social security coverage shall be provided for all officers and employees who become members of the investment plan. Any modification of the present agreement with the Social Security Administration, or referendum required under the Social Security Act, for the purpose of providing social security coverage for any member shall be requested by the state agency in compliance with the applicable provisions of the Social Security Act governing such coverage. However, retroactive social security coverage for service prior to December 1, 1970, with the employer may not be provided for any member who was not covered under the agreement as of November 30, 1970.

(18) **RETIREE HEALTH INSURANCE SUBSIDY.**—All officers and employees who are members of the investment plan are eligible to receive the retiree health insurance subsidy, subject to the provisions of s. 112.363.

(19) **MEMBER RECORDS.**—Personal identifying information of a member in the investment plan contained in Florida Retirement System records held by the state board or the department is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(20) **DESIGNATION OF BENEFICIARIES.**—

(a) Each member may, by electronic means or on a form provided for that purpose, signed and filed with the third-party administrator, designate a choice of one or more persons, named sequentially or jointly, as his or her beneficiary for receiving the benefits, if any, which may be payable pursuant to this chapter in the event of the member's death. If no beneficiary is named in this manner, or if no beneficiary designated by the member survives the member, the beneficiary shall be the spouse of the deceased, if living. If the member's spouse is not alive at the time of the member's death, the beneficiary shall be the living children of the member. If no children survive, the beneficiary shall be the member's father or mother, if living; otherwise, the beneficiary shall be the member's estate. The beneficiary most recently designated by a member shall be the beneficiary entitled to any benefits payable at the time of the member's death. However, for a member who dies prior to his or her effective date of retirement, the spouse at the time of death shall be the member's beneficiary unless the member designates a different beneficiary subsequent to the member's most recent marriage.

(b) If a member designates a primary beneficiary other than the member's spouse, the member's spouse must sign the beneficiary designation form to acknowledge the designation. This requirement does not apply to the designation of one or more contingent beneficiaries to receive benefits remaining upon the death of the primary beneficiary or beneficiaries.

(c) Notwithstanding the member's designation of benefits to be paid through a trust to a beneficiary that is a natural person and the provisions of the trust, benefits must be paid directly to the beneficiary if the person is

no longer a minor or an incapacitated person as defined in s. 744.102.

(21) **PARTICIPATION BY TERMINATED DEFERRED RETIREMENT OPTION PROGRAM MEMBERS.**—Notwithstanding any other provision of law, members in the Deferred Retirement Option Program offered under part I may, after conclusion of their participation in the program, elect to roll over or authorize a direct trustee-to-trustee transfer to an account under the investment plan of their Deferred Retirement Option Program proceeds distributed as provided under s. 121.091(13)(c)5. The transaction must constitute an “eligible rollover distribution” within the meaning of s. 402(c)(4) of the Internal Revenue Code.

(a) The investment plan may accept such amounts for deposit into member accounts as provided in paragraph (5)(e).

(b) The affected member shall direct the investment of his or her investment account; however, unless he or she becomes a renewed member of the Florida Retirement System under s. 121.122 and elects to participate in the investment plan, no contributions may be made to the member's account as provided under paragraph (5)(a).

(c) The state board or the department is not responsible for locating those persons who may be eligible to participate in the investment plan under this subsection.

(22) **CREDIT FOR MILITARY SERVICE.**—Creditable service of any member of the investment plan includes military service in the Armed Forces of the United States as provided in s. 121.111(1).

**History.**—s. 3, ch. 2000-169; s. 5, ch. 2001-235; s. 2, ch. 2001-255; s. 1, ch. 2002-45; s. 6, ch. 2002-177; ss. 1, 8, ch. 2002-273; s. 8, ch. 2003-6; s. 7, ch. 2003-260; s. 2, ch. 2004-71; s. 4, ch. 2005-253; s. 30, ch. 2006-178; s. 1, ch. 2006-205; s. 4, ch. 2007-92; s. 1, ch. 2007-201; s. 22, ch. 2008-4; s. 1, ch. 2009-97; s. 18, ch. 2009-209; s. 1, ch. 2010-180; s. 26, ch. 2011-68; s. 13, ch. 2012-5; s. 9, ch. 2012-222; s. 1, ch. 2016-63; s. 11, ch. 2017-88.

#### **121.4502 Florida Retirement System Investment Plan Trust Fund.—**

(1) The Florida Retirement System Investment Plan Trust Fund is created to hold the assets of the Florida Retirement System Investment Plan in trust for the exclusive benefit of the plan's members and beneficiaries, and for the payment of reasonable administrative expenses of the plan, in accordance with s. 401 of the Internal Revenue Code, and shall be administered by the state board as trustee. Funds shall be credited to the trust fund as provided in this part, to be used for the purposes of this part. The trust fund is exempt from the service charges imposed by s. 215.20.

(2) The Florida Retirement System Investment Plan Trust Fund is a retirement trust fund of the Florida Retirement System that accounts for retirement plan assets held by the state in a trustee capacity as a fiduciary for individual participants in the Florida Retirement System Investment Plan and, pursuant to s. 19(f), Art. III of the State Constitution, is not subject to termination.

(3) A forfeiture account shall be created within the Florida Retirement System Investment Plan Trust Fund to hold the assets derived from the forfeiture of benefits by participants. Pursuant to a private letter ruling from

the Internal Revenue Service, the forfeiture account may be used only for paying expenses of the Florida Retirement System Investment Plan and reducing future employer contributions to the program. Consistent with Rulings 80-155 and 74-340 of the Internal Revenue Service, unallocated reserves within the forfeiture account must be used as quickly and as prudently as possible considering the state board's fiduciary duty. Expected withdrawals from the account must endeavor to reduce the account to zero each fiscal year.

**History.**—s. 1, ch. 2001-255; s. 2, ch. 2010-180; s. 27, ch. 2011-68.

#### **121.4503 Florida Retirement System Contributions Clearing Trust Fund.—**

(1) The Florida Retirement System Contributions Clearing Trust Fund is created as a clearing fund for disbursing employer and employee contributions to the component plans of the Florida Retirement System and shall be administered by the Department of Management Services. Funds shall be credited to the trust fund as provided in this chapter and held in trust for the contributing employees and employers until such time as the assets are transferred by the department to the Florida Retirement System Trust Fund, the Florida Retirement System Investment Plan Trust Fund, or other trust funds as authorized by law, to be used for the purposes of this chapter. The trust fund is exempt from the service charges imposed by s. 215.20.

(2) The Florida Retirement System Contributions Clearing Trust Fund is a clearing trust fund of the Department of Management Services pursuant to s. 19(f), Art. III of the State Constitution, and is not subject to termination.

**History.**—ss. 1, 2, ch. 2002-73; s. 28, ch. 2011-68; s. 38, ch. 2012-116.

**121.571 Contributions.**—Contributions to the Florida Retirement System Investment Plan shall be made as follows:

(1) **CONTRIBUTORY PLAN.**—Each employer and employee shall submit contributions as required by s. 121.71.

(2) **CONTRIBUTION RATES GENERALLY.**—Contributions to fund the retirement, disability, and line-of-duty death benefits provided under this part must be based on the uniform contribution rates established by s. 121.71 and on the membership class or subclass of the member. Such contributions must be allocated as provided in ss. 121.72, 121.73, and 121.735.

(3) **CONTRIBUTIONS FOR SOCIAL SECURITY COVERAGE AND FOR RETIREE HEALTH INSURANCE SUBSIDY.**—Contributions required under s. 121.71 are in addition to employer and member contributions for social security and the Retiree Health Insurance Subsidy Trust Fund as required under ss. 112.363, 121.052, 121.055, and 121.071, as appropriate.

**History.**—s. 3, ch. 2000-169; s. 17, ch. 2001-262; s. 7, ch. 2002-177; s. 29, ch. 2011-68; s. 2, ch. 2016-213.

**121.591 Payment of benefits.**—Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased

and a proper application has been filed as prescribed by the state board or the department. Benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code. The state board or department, as appropriate, may cancel an application for retirement benefits if the member or beneficiary fails to timely provide the information and documents required by this chapter and the rules of the state board and department. In accordance with their respective responsibilities, the state board and the department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application if the required information or documents are not received. The state board and the department, as appropriate, are authorized to cash out a de minimis account of a member who has been terminated from Florida Retirement System covered employment for a minimum of 6 calendar months. A de minimis account is an account containing employer and employee contributions and accumulated earnings of not more than \$5,000 made under the provisions of this chapter. Such cash-out must be a complete lump-sum liquidation of the account balance, subject to the provisions of the Internal Revenue Code, or a lump-sum direct rollover distribution paid directly to the custodian of an eligible retirement plan, as defined by the Internal Revenue Code, on behalf of the member. Any nonvested accumulations and associated service credit, including amounts transferred to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6), shall be forfeited upon payment of any vested benefit to a member or beneficiary, except for de minimis distributions or minimum required distributions as provided under this section. If any financial instrument issued for the payment of retirement benefits under this section is not presented for payment within 180 days after the last day of the month in which it was originally issued, the third-party administrator or other duly authorized agent of the state board shall cancel the instrument and credit the amount of the instrument to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6). Any amounts transferred to the suspense account are payable upon a proper application, not to include earnings thereon, as provided in this section, within 10 years after the last day of the month in which the instrument was originally issued, after which time such amounts and any earnings attributable to employer contributions shall be forfeited. Any forfeited amounts are assets of the trust fund and are not subject to chapter 717.

(1) **NORMAL BENEFITS.**—Under the investment plan:

(a) Benefits in the form of vested accumulations as described in s. 121.4501(6) are payable under this

subsection in accordance with the following terms and conditions:

1. Benefits are payable only to a member, an alternate payee of a qualified domestic relations order, or a beneficiary.

2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with the law, the contracts, and any applicable board rule or policy.

3. The member must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39).

4. Benefit payments may not be made until the member has been terminated for 3 calendar months, except that the state board may authorize by rule for the distribution of up to 10 percent of the member's account after being terminated for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021.

5. If a member or former member of the Florida Retirement System receives an invalid distribution, such person must either repay the full amount within 90 days after receipt of final notification by the state board or the third-party administrator that the distribution was invalid, or, in lieu of repayment, the member must terminate employment from all participating employers. If such person fails to repay the full invalid distribution within 90 days after receipt of final notification, the person may be deemed retired from the investment plan by the state board and is subject to s. 121.122. If such person is deemed retired, any joint and several liability set out in s. 121.091(9)(d)2. is void, and the state board, the department, or the employing agency is not liable for gains on payroll contributions that have not been deposited to the person's account in the investment plan, pending resolution of the invalid distribution. The member or former member who has been deemed retired or who has been determined by the state board to have taken an invalid distribution may appeal the agency decision through the complaint process as provided under s. 121.4501(9)(g)3. As used in this subparagraph, the term "invalid distribution" means any distribution from an account in the investment plan which is taken in violation of this section, s. 121.091(9), or s. 121.4501.

(b) If a member elects to receive his or her benefits upon termination of employment as defined in s. 121.021, the member must submit a written application or an application by electronic means to the third-party administrator indicating his or her preferred distribution date and selecting an authorized method of distribution as provided in paragraph (c). The member may defer receipt of benefits until he or she chooses to make such application, subject to federal requirements.

(c) Upon receipt by the third-party administrator of a properly executed application for distribution of benefits, the total accumulated benefit is payable to the member pro rata across all Florida Retirement System benefit sources as:

1. A lump-sum or partial distribution to the member;

2. A lump-sum direct rollover distribution whereby all accrued benefits, plus interest and investment earnings, are paid from the member's account directly to the

custodian of an eligible retirement plan, as defined in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the member; or

3. Periodic distributions, as authorized by the state board.

(d) The distribution payment method selected by the member or beneficiary, and the retirement of the member or beneficiary, is final and irrevocable at the time a benefit distribution payment is cashed, deposited, or transferred to another financial institution. Any additional service that remains unclaimed at retirement may not be claimed or purchased, and the type of retirement may not be changed, except that if a member recovers from a disability, the member may subsequently request benefits under subsection (2).

(e) A member may not receive a distribution of employee contributions if a pending qualified domestic relations order is filed against the member's investment plan account.

(2) **DISABILITY RETIREMENT BENEFITS.**—Benefits provided under this subsection are payable in lieu of the benefits that would otherwise be payable under the provisions of subsection (1). Such benefits must be funded from employer contributions made under s. 121.571, transferred employee contributions and funds accumulated pursuant to paragraph (a), and interest and earnings thereon.

(a) *Transfer of funds.*—To qualify to receive monthly disability benefits under this subsection:

1. All moneys accumulated in the member's account, including vested and nonvested accumulations as described in s. 121.4501(6), must be transferred from such individual accounts to the division for deposit in the disability account of the Florida Retirement System Trust Fund. Such moneys must be accounted for separately. Earnings must be credited on an annual basis for amounts held in the disability accounts of the Florida Retirement System Trust Fund based on actual earnings of the trust fund.

2. If the member has retained retirement credit earned under the pension plan as provided in s. 121.4501(3), a sum representing the actuarial present value of such credit within the Florida Retirement System Trust Fund shall be reassigned by the division from the pension plan to the disability program as implemented under this subsection and shall be deposited in the disability account of the trust fund. Such moneys must be accounted for separately.

(b) *Disability retirement; entitlement.*—

1. A member of the investment plan who becomes totally and permanently disabled, as defined in paragraph (d), after completing 8 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of length of service, is entitled to a monthly disability benefit.

2. In order for service to apply toward the 8 years of creditable service required for regular disability benefits, or toward the creditable service used in calculating a service-based benefit as provided under paragraph (g), the service must be creditable service as described below:

a. The member's period of service under the investment plan shall be considered creditable service, except as provided in subparagraph d.

b. If the member has elected to retain credit for service under the pension plan as provided under s. 121.4501(3), all such service shall be considered creditable service.

c. If the member elects to transfer to his or her member accounts a sum representing the present value of his or her retirement credit under the pension plan as provided under s. 121.4501(3), the period of service under the pension plan represented in the present value amounts transferred shall be considered creditable service, except as provided in subparagraph d.

d. If a member has terminated employment and has taken distribution of his or her funds as provided in subsection (1), all creditable service represented by such distributed funds is forfeited for purposes of this subsection.

(c) *Disability retirement effective date.*—The effective retirement date for a member who applies and is approved for disability retirement shall be established as provided under s. 121.091(4)(a)2. and 3.

(d) *Total and permanent disability.*—A member shall be considered totally and permanently disabled if, in the opinion of the division, he or she is prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee.

(e) *Proof of disability.*—Before approving payment of any disability retirement benefit, the division shall require proof that the member is totally and permanently disabled as provided under s. 121.091(4)(c).

(f) *Disability retirement benefit.*—Upon the disability retirement of a member under this subsection, the member shall receive a monthly benefit that begins accruing on the first day of the month of disability retirement, as approved by the division, and is payable on the last day of that month and each month thereafter during his or her lifetime and continued disability. All disability benefits must be paid out of the disability account of the Florida Retirement System Trust Fund established under this subsection.

(g) *Computation of disability retirement benefit.*—The amount of each monthly payment must be calculated as provided under s. 121.091(4)(f). Creditable service under both the pension plan and the investment plan shall be applicable as provided under paragraph (b).

(h) *Reapplication.*—A member whose initial application for disability retirement is denied may reapply for disability benefits as provided in s. 121.091(4)(g).

(i) *Membership.*—Upon approval of a member's application for disability benefits, the member shall be transferred to the pension plan, effective upon his or her disability retirement effective date.

(j) *Option to cancel.*—A member whose application for disability benefits is approved may cancel the application if the cancellation request is received by the division before a disability retirement warrant has been deposited, cashed, or received by direct deposit. Upon cancellation:

1. The member's transfer to the pension plan under paragraph (i) shall be nullified;

2. The member shall be retroactively reinstated in the investment plan without hiatus;

3. All funds transferred to the Florida Retirement System Trust Fund under paragraph (a) must be returned to the member accounts from which the funds were drawn; and

4. The member may elect to receive the benefit payable under subsection (1) in lieu of disability benefits.

(k) *Recovery from disability.*—

1. The division may require periodic reexaminations at the expense of the disability program account of the Florida Retirement System Trust Fund. Except as provided in subparagraph 2., all other matters relating to recovery from disability shall be as provided under s. 121.091(4)(h).

2. Upon recovery from disability, the recipient of disability retirement benefits under this subsection shall be a compulsory member of the investment plan. The net difference between the recipient's original account balance transferred to the Florida Retirement System Trust Fund, including earnings and total disability benefits paid to such recipient, if any, shall be determined as provided in sub-subparagraph a.

a. An amount equal to the total benefits paid shall be subtracted from that portion of the transferred account balance consisting of vested accumulations as described under s. 121.4501(6), if any, and an amount equal to the remainder of benefit amounts paid, if any, shall be subtracted from any remaining non-vested accumulations.

b. Amounts subtracted under sub-subparagraph a. must be retained within the disability account of the Florida Retirement System Trust Fund. Any remaining account balance shall be transferred to the third-party administrator for disposition as provided under sub-subparagraph c. or sub-subparagraph d., as appropriate.

c. If the recipient returns to covered employment, transferred amounts must be deposited in individual accounts under the investment plan, as directed by the member. Vested and nonvested amounts shall be accounted for separately as provided in s. 121.4501(6).

d. If the recipient fails to return to covered employment upon recovery from disability:

(I) Any remaining vested amount must be deposited in individual accounts under the investment plan, as directed by the member, and is payable as provided in subsection (1).

(II) Any remaining nonvested amount must be held in a suspense account and is forfeitable after 5 years as provided in s. 121.4501(6).

3. If present value was reassigned from the pension plan to the disability program as provided under subparagraph (a)2., the full present value amount must be returned to the defined benefit account within the Florida Retirement System Trust Fund and the member's associated retirement credit under the pension plan must be reinstated in full. Any benefit based upon such credit must be calculated as provided in s. 121.091(4)(h)1.

(l) *Nonadmissible causes of disability.*—A member is not entitled to a disability retirement benefit if the disability results from any injury or disease as described in s. 121.091(4)(i).

(m) *Disability retirement of justice or judge by order of Supreme Court.*—

1. If a member is a justice of the Supreme Court, judge of a district court of appeal, circuit judge, or judge of a county court who has served for the years equal to, or greater than, the vesting requirement in s. 121.021(45) as an elected constitutional judicial officer, including service as a judicial officer in any court abolished pursuant to Art. V of the State Constitution, and who is retired for disability pursuant to s. 12, Art. V of the State Constitution, the member's Option 1 monthly disability benefit amount as provided in s. 121.091(6)(a)1. shall be two-thirds of his or her monthly compensation as of the member's disability retirement date. The member may alternatively elect to receive an actuarially adjusted disability retirement benefit under any other option as provided in s. 121.091(6)(a) or to receive the normal benefit payable under subsection (1).

2. If any justice or judge who is a member of the investment plan is retired for disability pursuant to s. 12, Art. V of the State Constitution and elects to receive a monthly disability benefit under the provisions of this paragraph:

a. Any present value amount that was transferred to his or her investment plan account and all employer and employee contributions made to such account on his or her behalf, plus interest and earnings thereon, must be transferred to and deposited in the disability account of the Florida Retirement System Trust Fund; and

b. The monthly disability benefits payable under this paragraph shall be paid from the disability account of the Florida Retirement System Trust Fund.

(n) *Death of retiree or beneficiary.*—Upon the death of a disabled retiree or beneficiary of the retiree who is receiving monthly disability benefits under this subsection, the monthly benefits shall be paid through the last day of the month of death and shall terminate, or be adjusted, if applicable, as of that date in accordance with the optional form of benefit selected at the time of retirement. The department may adopt rules necessary to administer this paragraph.

(3) **DEATH BENEFITS.**—Under the Florida Retirement System Investment Plan:

(a) Survivor benefits are payable in accordance with the following terms and conditions, except as provided in subsection (4):

1. To the extent vested, benefits are payable only to a member's beneficiary or beneficiaries as designated by the member as provided in s. 121.4501(20).

2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with the law, the contracts, and any applicable state board rule or policy.

3. To receive benefits, the member must be deceased.

(b) Except as provided in subsection (4), in the event of a member's death, all vested accumulations as



described in s. 121.4501(6), less withholding taxes remitted to the Internal Revenue Service, shall be distributed, as provided in paragraph (c) or as described in s. 121.4501(20), as if the member retired on the date of death. No other death benefits are available for survivors of members, except for benefits, or coverage for benefits, as are otherwise provided by law or separately provided by the employer, at the employer's discretion.

(c) Except as provided in subsection (4), upon receipt by the third-party administrator of a properly executed application for distribution of benefits, the total accumulated benefit is payable by the third-party administrator to the member's surviving beneficiary or beneficiaries, as:

1. A lump-sum distribution payable to the beneficiary or beneficiaries, or to the deceased member's estate;

2. An eligible rollover distribution, if permitted, on behalf of the surviving spouse of a deceased member, whereby all accrued benefits, plus interest and investment earnings, are paid from the deceased member's account directly to the custodian of an eligible retirement plan, as described in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the surviving spouse; or

3. A partial lump-sum payment whereby a portion of the accrued benefit is paid to the deceased member's surviving spouse or other designated beneficiaries, less withholding taxes remitted to the Internal Revenue Service, and the remaining amount is transferred directly to the custodian of an eligible retirement plan, if permitted, as described in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the surviving spouse. The proportions must be specified by the member or the surviving beneficiary.

This paragraph does not abrogate other applicable provisions of state or federal law providing for payment of death benefits.

(4) **LINE-OF-DUTY DEATH BENEFITS FOR INVESTMENT PLAN MEMBERS.**—Benefits are provided under this subsection to the spouse and child or children of members in the investment plan when such members are killed in the line of duty and are payable in lieu of the benefits that would otherwise be payable under subsection (1) or subsection (3). Benefits provided by this subsection supersede any other distribution that may have been provided by the member's designation of beneficiary. Such benefits must be funded from employer contributions made under s. 121.571, transferred employee contributions and funds accumulated pursuant to paragraph (a), and interest and earnings thereon.

(a) *Transfer of funds.*—To qualify to receive monthly benefits under this subsection:

1. All moneys accumulated in the member's account, including vested and nonvested accumulations as described in s. 121.4501(6), must be transferred from such individual accounts to the division for deposit in the survivor benefit account of the Florida Retirement System Trust Fund. Moneys in the survivor benefit account must be accounted for separately. Earnings must be credited on an annual basis for amounts held in

the survivor benefit account of the Florida Retirement System Trust Fund based on actual earnings of the trust fund.

2. If the member has retained retirement credit earned under the pension plan as provided in s. 121.4501(3), a sum representing the actuarial present value of such credit within the Florida Retirement System Trust Fund shall be transferred by the division from the pension plan to the survivor benefit retirement program as implemented under this subsection and shall be deposited in the survivor benefit account of the trust fund.

(b) *Survivor retirement; entitlement.*—An investment plan member who is killed in the line of duty on or after July 1, 2002, regardless of length of creditable service, may have survivor benefits paid as provided in s. 121.091(7)(d) and (i) to:

1. The surviving spouse for the spouse's lifetime; or

2. If there is no surviving spouse or the surviving spouse dies, the member's child or children under 18 years of age and unmarried until the 18th birthday of the member's youngest child. Such payments may be extended until the 25th birthday of any child of the member if the child is unmarried and enrolled as a full-time student as provided in s. 121.091(7)(d) and (i).

(c) *Survivor benefit retirement effective date.*—

1. The effective retirement date for the surviving spouse or eligible child of a Special Risk Class member who is killed in the line of duty is:

a. The first day of the month following the member's death if the member dies on or after July 1, 2016.

b. July 1, 2016, for a member of the Special Risk Class when killed in the line of duty on or after July 1, 2013, but before July 1, 2016, if the application is received before July 1, 2016; or the first day of the month following the receipt of such application.

2. Except as provided in subparagraph 1., the effective retirement date for the surviving spouse or eligible child of an investment plan member who is killed in the line of duty is:

a. The first day of the month following the member's death if the member dies on or after July 1, 2017.

b. July 1, 2017, if the member is killed in the line of duty on or after July 1, 2002, but before July 1, 2017, if the application is received before July 1, 2017; or the first day of the month following the receipt of such application.

If the investment plan account balance has already been paid out to the surviving spouse or the eligible unmarried dependent child or children, the benefit payable shall be actuarially reduced by the amount of the payout.

(d) *Line-of-duty death benefit.*—

1. The following individuals are eligible to receive a retirement benefit under s. 121.091(7)(d) and (i) if the member's account balance is surrendered and an application is received and approved:

a. The surviving spouse.

b. If there is no surviving spouse or the surviving spouse dies, the member's child or children under 18 years of age and unmarried until the 18th birthday of the

member's youngest child, or until the 25th birthday of the member's child if the child is unmarried and enrolled as a full-time student.

2. Such surviving spouse or such child or children shall receive a monthly survivor benefit that begins accruing on the first day of the month of survivor benefit retirement, as approved by the division, and is payable on the last day of that month and each month thereafter during the surviving spouse's lifetime or on behalf of the unmarried children of the member until the 18th birthday of the youngest child, or until the 25th birthday of any of the member's unmarried children who are enrolled as full-time students. Survivor benefits must be paid out of the survivor benefit account of the Florida Retirement System Trust Fund established under this subsection.

If the investment plan account balance has already been paid out to the surviving spouse or the eligible unmarried dependent child or children, the benefit payable shall be actuarially reduced by the amount of the payout.

(e) *Computation of survivor benefit retirement benefit.*—The amount of each monthly payment must be calculated as provided under s. 121.091(7)(d) and (i).

(f) *Death of the surviving spouse or children.*—

1. Upon the death of a surviving spouse, the monthly benefits shall be paid through the last day of the month of death and shall terminate or be paid on behalf of the unmarried child or children until the 18th birthday of the youngest child, or the 25th birthday of any of the member's unmarried children who are enrolled as full-time students.

2. If the surviving spouse dies and the benefits are being paid on behalf of the member's unmarried children as provided in subparagraph 1., benefits shall be paid through the last day of the month until the later of the month the youngest child reaches his or her 18th birthday, the month of the 25th birthday of any of the member's unmarried children enrolled as full-time students, or the month of the death of the youngest child.

(5) **LIMITATION ON LEGAL PROCESS.**—The benefits payable to any person under the Florida Retirement System Investment Plan, and any contributions accumulated under the plan, are not subject to assignment, execution, attachment, or any legal process, except for qualified domestic relations orders by a court of competent jurisdiction, income deduction orders as provided in s. 61.1301, and federal income tax levies.

**History.**—s. 9, ch. 2002-273; s. 3, ch. 2004-71; s. 5, ch. 2005-253; s. 2, ch. 2006-205; s. 2, ch. 2009-97; s. 19, ch. 2009-209; s. 3, ch. 2010-180; s. 30, ch. 2011-68; s. 10, ch. 2012-222; s. 3, ch. 2016-213; s. 12, ch. 2017-88.

**121.5911 Disability retirement program; qualified status; rulemaking authority.**—It is the intent of the Legislature that the disability retirement program for members of the Florida Retirement System Investment Plan meet all applicable requirements of federal law for a qualified plan. The department shall seek a private letter ruling from the Internal Revenue Service on the disability retirement program.

**History.**—s. 12, ch. 2002-273; s. 31, ch. 2011-68; s. 39, ch. 2012-116.

**121.5912 Survivor benefit retirement program; qualified status; rulemaking authority.**—It is the intent of the Legislature that the survivor benefit retirement program for members of the Florida Retirement System Investment Plan meet all applicable requirements for a qualified plan. If the state board or the division receives notification from the Internal Revenue Service that this program or any portion of this program will cause the retirement system, or any portion thereof, to be disqualified for tax purposes under the Internal Revenue Code, the portion that will cause the disqualification does not apply. Upon such notice, the state board or the division shall notify the presiding officers of the Legislature. The state board and the department may adopt any rules necessary to maintain the qualified status of the survivor benefit retirement program.

**History.**—s. 4, ch. 2016-213; s. 13, ch. 2017-88.

### PART III

#### FLORIDA RETIREMENT SYSTEM CONTRIBUTION RATES

121.70	Legislative purpose and intent.
121.71	Uniform rates; process; calculations; levy.
121.72	Allocations to investment plan member accounts; percentage amounts.
121.73	Allocations for member disability coverage; percentage amounts.
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121.74	Administrative and educational expenses.
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121.77	Deductions from member accounts.
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#### **121.70 Legislative purpose and intent.**—

(1) This part provides for a uniform system for funding benefits provided under the Florida Retirement System Pension Plan established under part I of this chapter (referred to in this part as the pension plan) and under the Florida Retirement System Investment Plan established under part II of this chapter (referred to in this part as the investment plan). The Legislature recognizes and declares that the Florida Retirement System is a single retirement system, consisting of two retirement plans and other nonintegrated programs. Employees and employers participating in the Florida Retirement System collectively shall be responsible for making contributions to support the benefits provided under both plans. The employees and employers shall make contributions based upon uniform contribution rates determined as a percentage of the employee's gross monthly compensation for the employee's class or subclass of Florida Retirement System membership, irrespective of the retirement plan in which the individual employee is enrolled. This shall be known as a uniform or blended contribution rate system.

(2) In establishing a uniform contribution rate system, it is the intent of the Legislature to:

(a) Provide greater stability and certainty in financial planning and budgeting for Florida Retirement System employers by eliminating the fiscal instability that would be caused by dual rates coupled with employee-selected plan participation;

(b) Provide greater fiscal equity and uniformity for system employers by effectively distributing the financial burden and benefit of short-term system deficits and surpluses, respectively, in proportion to total system payroll; and

(c) Allow employees to make their retirement plan selection decisions free of circumstances that may cause employers to favor one plan choice over another.

**History.**—s. 1, ch. 2002-177; s. 32, ch. 2011-68.

#### **121.71 Uniform rates; process; calculations; levy.—**

(1) In conducting the system actuarial study required under s. 121.031, the actuary shall follow all requirements specified to determine, by Florida Retirement System employee membership class, the dollar contribution amounts necessary for the next fiscal year for the pension plan. In addition, the actuary shall determine, by Florida Retirement System membership class, based on an estimate for the next fiscal year of the gross compensation of employees participating in the investment plan, the dollar contribution amounts necessary to make the allocations required under ss. 121.72, 121.73, and 121.735. For each employee membership class and subclass, the actuarial study must establish a uniform rate necessary to fund the benefit obligations under both Florida Retirement System retirement plans by dividing the sum of total dollars required by the estimated gross compensation of members in both plans.

(2) Based on the uniform rates set forth in subsections (3), (4), and (5), employees and employers shall make monthly contributions to the Division of Retirement as required in s. 121.061(1), which shall initially deposit the funds into the Florida Retirement System Contributions Clearing Trust Fund. A change in a contribution rate is effective the first day of the month for which a full month's employer and employee contribution may be made on or after the beginning date of the change. Beginning July 1, 2011, each employee shall contribute the contributions required in subsection (3). The employer shall deduct the contribution from the employee's monthly salary, and the contribution shall be submitted to the division. These contributions shall be reported as employer-paid employee contributions, and credited to the account of the employee. The contributions shall be deducted from the employee's salary before the computation of applicable federal taxes and treated as employer contributions under 26 U.S.C. s. 414(h)(2). The employer specifies that the contributions, although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee. The employee does not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the plan. Such contributions are mandatory, and each employee is considered to have consented to payroll deductions. Payment of an employee's salary or

wages, less the contribution, is a full and complete discharge and satisfaction of all claims and demands for the service rendered by employees during the period covered by the payment, except their claims to the benefits to which they may be entitled under this chapter.

(3) Required employee retirement contribution rates for each membership class and subclass of the Florida Retirement System for both retirement plans are as follows:

Membership Class	Percentage of Gross Compensation, Effective July 1, 2011
Regular Class	3.00%
Special Risk Class	3.00%
Special Risk Administrative Support Class	3.00%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	3.00%
Elected Officers' Class— Justices, Judges	3.00%
Elected Officers' Class— County Elected Officers	3.00%
Senior Management Service Class	3.00%
DROP	0.00%

(4) Required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System for both retirement plans are as follows:

Membership Class	Percentage of Gross Compensation, Effective July 1, 2021
Regular Class	4.91%
Special Risk Class	15.27%
Special Risk Administrative Support Class	9.73%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	8.49%
Elected Officers' Class— Justices, Judges	13.38%
Elected Officers' Class— County Elected Officers	10.28%
Senior Management Class	6.49%
DROP	7.23%

(5) In order to address unfunded actuarial liabilities of the system, the required employer retirement

contribution rates for each membership class and subclass of the Florida Retirement System for both retirement plans are as follows:

Membership Class	Percentage of Gross Compensation, Effective July 1, 2021
Regular Class	4.19%
Special Risk Class	8.90%
Special Risk Administrative Support Class	26.31%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	53.52%
Elected Officers' Class— Justices, Judges	25.81%
Elected Officers' Class— County Elected Officers	39.42%
Senior Management Service Class	20.80%
DROP	9.45%

(6) If a member is reported under an incorrect membership class and the amount of contributions reported and remitted is less than the amount required, the employer shall owe the difference, plus the delinquent fee, of 1 percent for each calendar month or part thereof that the contributions should have been paid. The delinquent assessment may not be waived. If the contributions reported and remitted are more than the amount required, the employer shall receive a credit to be applied against future contributions owed.

(7) The state actuary shall recognize and use an appropriate level of available excess assets of the Florida Retirement System Trust Fund to offset the difference between the normal costs of the Florida Retirement System and the statutorily prescribed contribution rates.

**History.**—s. 1, ch. 2002-177; s. 47, ch. 2002-402; s. 3, ch. 2003-260; s. 1, ch. 2004-293; s. 1, ch. 2005-93; s. 1, ch. 2006-35; s. 1, ch. 2007-84; s. 7, ch. 2008-139; s. 1, ch. 2009-76; s. 33, ch. 2011-68; s. 4, ch. 2012-146; s. 5, ch. 2013-53; s. 5, ch. 2014-54; s. 5, ch. 2015-227; s. 2, ch. 2016-63; ss. 6, 10, ch. 2016-213; s. 14, ch. 2017-88; s. 1, ch. 2018-12; s. 27, ch. 2019-3; s. 1, ch. 2019-8; s. 3, ch. 2019-21; s. 25, ch. 2020-2; s. 1, ch. 2020-116; s. 1, ch. 2021-42.

#### **121.72 Allocations to investment plan member accounts; percentage amounts.—**

(1) The allocations established in subsection (4) shall fund retirement benefits under the investment plan and shall be transferred monthly by the Division of Retirement from the Florida Retirement System Contributions Clearing Trust Fund to the third-party administrator for deposit in each participating employee's individual account based on the membership class of the participant.

(2) The allocations are stated as a percentage of each investment plan member's gross compensation for the calendar month. A change in a contribution percentage is effective the first day of the month for which retirement contributions may be made on or after the

beginning date of the change. Contribution percentages may be modified by general law.

(3) Employer and employee contributions to member accounts shall be accounted for separately. Interest and investment earnings on contributions shall accrue on a tax-deferred basis until proceeds are distributed.

(4) Effective July 1, 2002 through June 30, 2012, allocations from the Florida Retirement System Contributions Clearing Trust Fund to investment plan member accounts are as follows:

Membership Class	Percentage of Gross Com- pensation
Regular Class	9.00%
Special Risk Class	20.00%
Special Risk Administrative Support Class	11.35%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	13.40%
Elected Officers' Class— Justices, Judges	18.90%
Elected Officers' Class— County Elected Officers	16.20%
Senior Management Service Class	10.95%

(5) Effective July 1, 2012, allocations from the Florida Retirement System Contributions Clearing Trust Fund to investment plan member accounts are as follows:

Membership Class	Percentage of Gross Com- pensation
Regular Class	6.30%
Special Risk Class	14.00%
Special Risk Administrative Support Class	7.95%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	9.38%
Elected Officers' Class— Justices, Judges	13.23%
Elected Officers' Class— County Elected Officers	11.34%
Senior Management Service Class	7.67%

**History.**—s. 1, ch. 2002-177; s. 34, ch. 2011-68; s. 5, ch. 2012-146.

#### **121.73 Allocations for member disability coverage; percentage amounts.—**

(1) The allocations established in subsection (3) shall be used to provide disability coverage for members in the investment plan and shall be transferred monthly by the Division of Retirement from the Florida Retirement System Contributions Clearing Trust Fund to the disability account of the Florida Retirement System Trust Fund.

(2) The allocations are stated as a percentage of each investment plan member's gross compensation for the calendar month. A change in a contribution percentage is effective the first day of the month for which retirement contributions may be made on or after the

beginning date of the change. Contribution percentages may be modified by general law.

(3) Effective July 1, 2002, allocations from the Florida Retirement System Contributions Clearing Trust Fund to provide disability coverage for members in the investment plan, and to offset the costs of administering said coverage, are as follows:

Membership Class	Percentage of Gross Compensation
Regular Class	0.25%
Special Risk Class	1.33%
Special Risk Administrative Support Class	0.45%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	0.41%
Elected Officers' Class— Justices, Judges	0.73%
Elected Officers' Class— County Elected Officers	0.41%
Senior Management Service Class	0.26%

**History.**—s. 1, ch. 2002-177; s. 35, ch. 2011-68.

#### **121.735 Allocations for member line-of-duty death benefits; percentage amounts.—**

(1) The allocations established in subsection (3) shall be used to provide line-of-duty death benefit coverage for members in the investment plan and shall be transferred monthly by the division from the Florida Retirement System Contributions Clearing Trust Fund to the survivor benefit account of the Florida Retirement System Trust Fund.

(2) Such allocations are stated as a percentage of each investment plan member's gross compensation for the calendar month. Any change in a contribution percentage is effective the first day of the month for which retirement contributions may be made on or after the beginning date of the change. Contribution percentages may be modified by general law.

(3) Allocations from the Florida Retirement System Contributions Clearing Trust Fund to provide line-of-duty death benefits for members in the investment plan and to offset the costs of administering said coverage, are as follows:

Membership Class	Percentage of Gross Compensation
Regular Class	0.05%
Special Risk Class	1.21%
Special Risk Administrative Support Class	0.03%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	0.15%
Elected Officers' Class— Justices, Judges	0.09%
Elected Officers' Class— County Elected Officers	0.20%
Senior Management Service Class	0.05%

**History.**—s. 5, ch. 2016-213; s. 15, ch. 2017-88; s. 2, ch. 2019-21.

**121.74 Administrative and educational expenses.**—In addition to contributions required to fund member accounts under s. 121.71, effective July 1, 2010, through June 30, 2014, employers participating in the Florida Retirement System shall contribute an employer assessment amount equal to 0.03 percent of the payroll reported for each class or subclass of Florida Retirement System membership. Effective July 1, 2014, the employer assessment is 0.04 percent of the payroll reported for each class or subclass of membership. Effective July 1, 2016, the employer assessment is 0.06 percent of the payroll reported for each class or subclass of membership. The amount assessed shall be transferred by the division from the Florida Retirement System Contributions Clearing Trust Fund to the State Board of Administration's Administrative Trust Fund to offset the costs of administering the investment plan and the costs of providing educational services to members of the Florida Retirement System. Approval of the trustees is required before the expenditure of these funds. Payments for third-party administrative or educational expenses shall be made only pursuant to the terms of the approved contracts for such services.

**History.**—s. 1, ch. 2002-177; s. 4, ch. 2003-260; s. 2, ch. 2004-293; s. 4, ch. 2005-93; s. 4, ch. 2010-180; s. 36, ch. 2011-68; s. 6, ch. 2014-54; s. 3, ch. 2016-63; s. 7, ch. 2016-213.

**121.75 Allocation for pension plan.**—After making the transfers required pursuant to ss. 121.71, 121.72, 121.73, 121.735, and 121.74, the monthly balance of funds in the Florida Retirement System Contributions Clearing Trust Fund shall be transferred to the Florida Retirement System Trust Fund to pay the costs of providing pension plan benefits and plan administrative costs under the pension plan.

**History.**—s. 1, ch. 2002-177; s. 37, ch. 2011-68; s. 8, ch. 2016-213.

**121.76 Contributions for social security and for retiree health insurance subsidy.**—Contributions required under this part shall be made or deducted, as may be appropriate, for each pay period and are in addition to employer and member contributions required for social security and the Retiree Health Insurance Subsidy Trust Fund as provided under parts I and II of this chapter.

**History.**—s. 1, ch. 2002-177.

**121.77 Deductions from member accounts.**—The State Board of Administration may authorize the third-party administrator to deduct reasonable fees and apply appropriate charges to investment plan member accounts. In no event may administrative and educational expenses exceed the portion of employer contributions earmarked for such expenses under this part, except for reasonable administrative charges assessed against member accounts of persons for whom no employer contributions are made during the calendar quarter. Investment management fees shall be deducted from member accounts, pursuant to the terms of the contract between the provider and the board.

**History.**—s. 1, ch. 2002-177; s. 38, ch. 2011-68.

**121.78 Payment and distribution of contributions.—**

(1) Contributions made pursuant to this part shall be paid by the employer, including the employee contribution, to the Division of Retirement by electronic funds transfer no later than the 5th working day of the month immediately following the month during which the payroll period ended. Accompanying payroll data must be transmitted to the division concurrent with the contributions.

(2) The division, the State Board of Administration, and the third-party administrator, as applicable, shall ensure that the contributions are distributed to the appropriate trust funds or participant accounts in a timely manner.

(3)(a) Employee and employer contributions and accompanying payroll data received after the 5th working day of the month are considered late. The employer shall be assessed by the Division of Retirement a penalty of 1 percent of the contributions due for each calendar month or part thereof that the contributions or accompanying payroll data are late. Proceeds from the 1 percent assessment against contributions made on behalf of members of the pension plan must be deposited in the Florida Retirement System Trust Fund, and proceeds from the 1 percent assessment against contributions made on behalf of members of the investment plan shall be transferred to the third-party administrator for deposit into member accounts, as provided in paragraph (c).

(b) Retirement contributions paid for a prior period shall be charged a delinquent fee of 1 percent for each calendar month or part thereof that the contributions should have been paid. This includes prior period contributions due to incorrect wages and contributions from an earlier report or wages and contributions that should have been reported but were not. The delinquent assessments may not be waived.

(c) If employee contributions or contributions made by an employer on behalf of members of the investment plan or accompanying payroll data are not received within the calendar month they are due, including, but not limited to, contribution adjustments as a result of employer errors or corrections, and if that delinquency results in market losses to members, the employer shall reimburse each member's account for market losses resulting from the late contributions. If a member has terminated employment and taken a distribution, the member is responsible for returning any excess contributions erroneously provided by employers, adjusted for any investment gain or loss incurred during the period such excess contributions were in the member's account. The state board or its designated agent shall communicate to terminated members any obligation to repay such excess contribution amounts. However, the state board, its designated agents, the Florida Retirement System Investment Plan Trust Fund, the department, or the Florida Retirement System Trust Fund may not incur any loss or gain as a result of an employer's correction of such excess contributions. The third-party

administrator, hired by the state board pursuant to s. 121.4501(8), shall calculate the market losses for each affected member. If contributions made on behalf of members of the investment plan or accompanying payroll data are not received within the calendar month due, the employer shall also pay the cost of the third-party administrator's calculation and reconciliation adjustments resulting from the late contributions. The third-party administrator shall notify the employer of the results of the calculations and the total amount due from the employer for such losses and the costs of calculation and reconciliation. The employer shall remit to the Division of Retirement the amount due within 30 working days after the date of the penalty notice sent by the division. The division shall transfer that amount to the third-party administrator, which shall deposit proceeds from the 1 percent assessment and from individual market losses into member accounts, as appropriate. The state board may adopt rules to administer the provisions regarding late contributions, late submission of payroll data, the process for reimbursing member accounts for resultant market losses, and the penalties charged to the employers.

(d) If employee contributions reported by an employer on behalf of members are reduced as a result of employer errors or corrections, and the member has terminated employment and taken a refund or distribution, the employer shall be billed and is responsible for recovering from the member any excess contributions erroneously provided by the employer.

(e) Delinquency fees specified in paragraph (a) may be waived by the division, with regard to pension plan contributions, and by the state board, with regard to investment plan contributions, only if, in the opinion of the division or the board, as appropriate, exceptional circumstances beyond the employer's control prevented remittance by the prescribed due date notwithstanding the employer's good faith efforts to effect delivery. Such a waiver of delinquency may be granted an employer only once each plan year.

(f) If the employer submits excess employer or employee contributions, the employer shall receive a credit to be applied against future contributions owed. The employer is responsible for reimbursing the member for any excess contributions submitted if any return of such an erroneous excess pretax contribution by the program is made within 1 year after making erroneous contributions or such other period allowed under applicable Internal Revenue guidance.

(g) If contributions made by an employer on behalf of members in the investment plan are delayed in posting to member accounts due to acts of God beyond the control of the Division of Retirement, the state board, or the third-party administrator, as applicable, market losses resulting from the late contributions are not payable to the members.

**History.**—s. 1, ch. 2002-177; s. 4, ch. 2004-71; s. 5, ch. 2010-180; s. 39, ch. 2011-68.